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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

DECIDED ON : 22nd FEBRUARY, 2016

+ **CRL.A. 325/2014**

MANDEEP KAUR @ JASBIR KAUR @ MANJEET KAUR

..... Appellant

Through : Mr.K.S.Bana, Advocate.

versus

DIRECTORATE OF REVENUE INTELLIGENCE..... Respondent

Through : Mr.Vineet Sharma, Proxy counsel
for Mr.Satish Aggarwala,
Advocate.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.Garg, J. (Oral)

1. The instant appeal has been filed by the appellant – Mandeep Kaur @ Jasbir Kaur @ Manjeet Kaur to challenge the legality and correctness of a judgment dated 20.12.2013 of learned Additional Sessions Judge in Sessions Case No.57A/2007 under Sections 21/29 NDPS Act by which she was held guilty for committing offences punishable under Sections 21(c) & 29 of the NDPS Act. By an order dated

21.12.2013, she was awarded RI for ten years with fine ₹1 lac each under both the heads. The sentences were to operate concurrently.

2. Briefly stated, the prosecution case as stated in the complaint was that on 19.03.2007, Sujeet Kumar, Intelligence Officer received a specific information that a golden beige coloured Mahindra Bolero vehicle bearing registration No. HR 70 3719 would cross Singhu Border located on G.T.Karnal road in between 10.30 p.m. to 11.30 p.m. and certain narcotic drugs were concealed in the said vehicle; and also a lady might be an occupant therein. The said information was reduced into writing (Ex.PW-1/A) and was immediately put up before PW-12 (Pankaj K.Singh). A raiding team was organized. A 'naka' was held on the road towards Delhi side. At about 11.00 p.m., a vehicle was seen coming from Haryana side crossing Singhu Border which was signaled to stop. There were two individuals in the said vehicle which was being driven by a sikh gentleman. A lady, later on identified as Mandeep Kaur @ Jasbir Kaur @ Manjeet Kaur (the appellant), was found sitting on the seat adjacent to the driver's seat. After conducting necessary proceedings and serving notices (Ex.PW-8/A & Ex.PW-8/B), the vehicle was searched and it resulted in recovery of 20 packets in all stuffed with some goods from inside cavities

created in the floor of the vehicle. One more cavity in the floor of the vehicle near the back seat of the vehicle next to the back door was observed but nothing incriminating was found concealed therein. In addition to it, documents pertaining to the vehicle was also recovered. These 20 packets were found containing white colour granular substance, the gross-weight of which was found to be 20.754 kg. and the net weight came to be 20.022 kg. heroin. Subsequent proceedings were conducted. Statements of the witnesses conversant with the facts were recorded. Upon completion of investigation, a complaint was filed against the appellant and her associates – Gurdev Singh and Balwinder Singh @ Dr.Balwinder Singh, who was finally declared Proclaimed Offender. The trial resulted in conviction of both the appellant and Gurdev Singh.

3. During the course of arguments, appellant's counsel on instructions stated at Bar that the appellant has opted not to challenge the findings of the Trial Court on conviction. She, however, prayed to modify the sentence order as the appellant has already undergone substantive sentence awarded to her. She is unable to pay the huge fine being in custody for the last about nine years.

4. Since the appellant has opted to accept the findings of the Trial Court on conviction, in the presence of overwhelming evidence, her conviction under Sections 21(c) & 29 of NDPS Act is affirmed.

5. Regarding Sentence Order, it transpires that she has already undergone almost the entire substantive sentence awarded to her. Nominal Roll dated 06.05.2014 reveals that she has remained in custody for seven years, one month and seventeen days as on 06.05.2014. She is not involved in any other criminal case and is not a previous convict; her overall jail conduct is satisfactory. Substantive sentence i.e. RI for ten years each under both the heads can't be modified or altered as it is the 'minimum' sentence prescribed under the Act. Similarly, fine of ₹1 lac each which is the minimum amount prescribed under the Section can't be reduced.

6. In the case of *'Shahejadjkhan Mahebubkhan Pathan vs. State of Gujarat'*, 2012 (10) SCALE 21, decided on 05.10.2012, the Supreme Court reduced the sentence from 15 years to 10 years as the appellant therein had already served nearly 12 years in jail. The order on payment of fine of ₹1,50,000/- was upheld but default sentence was reduced from RI for 3 years to RI for 6 months. The appellant therein was found in possession of 500 grams of brown sugar and was convicted for the offence

punishable under Section 8(c), 21 and 29 of NDPS Act. The Division Bench of Gujarat High Court had dismissed the Crl. A. No. 11 & 75/2002 vide order dated 08.07.2002.

7. Taking into consideration Section 30 of Cr.P.C. and the judgment of '*Shahejadkhan Mahebubkhan Pathan vs. State of Gujarat*', (supra), the sentence order is modified to the extent that default sentence for non-payment of fine ₹1 lac each shall be SI for one month each under both the offences. Other terms and conditions of the sentence order are left undisturbed.

8. Appeal stands disposed of in the above terms. Trial Court record be sent back forthwith with the copy of the order. A copy of the order be sent to the Superintendent Jail for information.

(S.P.GARG)
JUDGE

FEBRUARY 22, 2016 / tr