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

DECIDED ON : 16th DECEMBER, 2016

+ **CRL.A.764/2014**

STATE (NCT OF DELHI) Appellant

Through : Ms.Meenakshi Dahiya, APP.
versus

VINAY KUMAR Respondent

Through : Mr.R.K.Bachchan, Advocate.

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

S.P.GARG, J. (Oral)

1. Present appeal has been preferred by the State for enhancement of sentence. The appeal is contested by the respondent.
2. I have heard the learned counsel for the parties and have examined the file. By a judgment dated 21.11.2013 in Sessions Case No.28/N/13 arising out of FIR No.439/2012 PS Rajouri Garden, the respondent was held guilty for committing offences punishable under Section 21(b) of NDPS Act. By an order dated 21.11.2013, he was awarded RI for one month and fourteen days with fine ₹1,000/-. Aggrieved by the lenient view taken by the Trial Court, State has filed the instant appeal for enhancement of the sentence considering the gravity of the offence.
3. On 07.11.2012, the respondent was found in possession of the 22.5 grams smack in contravention of provision of Section 8(c) of NDPS

Act. The prosecution examined five witnesses. They were not cross-examined effectively by the counsel representing the respondent. Only certain suggestions were put in the cross-examination. In 313 Cr.P.C. statement the respondent admitted the guilt voluntarily. He also moved an application (Ex.C1) for release on the period already undergone by him in custody. In the sentence order, the Trial Court noted that the respondent - convict was 28 years old; a married person and was to take care of his widow mother, young wife and two years old school going daughter. He was not a previous convict. He was in custody for the last about one month and fourteen days. Considering these mitigating circumstances, the Trial Court took lenient view and ordered the respondent to release for the period already undergone by him in custody.

4. The discretion has been exercised reasonably by the Court below and deserves no intervention. Nothing has come on record to show that the respondent is involved in any other criminal case and / or is a habitual offender. Nothing has emerged on record that the respondent is dependent for his livelihood on the sale of contraband. Nothing has come on record if after the sentence awarded, his involvement has surfaced in any other similar activity. Though the sentence awarded to the respondent is somewhat on the lower side, considering the facts and circumstances, no intervention is required in appeal. The respondent had voluntarily confessed the guilt. The prosecution was unable to find out the source of contraband and as to who was the king-pin.

5. In the light of above discussion, the appeal lacks merits and is dismissed.

6. Trial Court record (if any) be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

DECEMBER 16, 2016 / tr

