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

DECIDED ON : 6th SEPTEMBER, 2016

+ **CRL.A. 757/2014**

STATE (GOVT. OF NCT OF DELHI) Appellant

Through : Mr.Amit Gupta, APP.

VERSUS

MOHD. HANIF Respondent

Through : Mr.Lalit Sharma, 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 the sentence awarded to the respondent by a judgment dated 17.04.2014 of learned Addl. Sessions Judge in Sessions Case No.38/13 arising out of FIR No.58/13 PS Jama Masjid. The appeal is contested by the respondent.

2. I have heard the learned counsel for the parties and have examined the file. The respondent was convicted under Section 21 of Narcotic Drugs and Psychotropic Substances Act, 1985 (In short 'the Act') for being in possession of 20 grams of Smack. By an order dated 17.04.2014, the respondent was sentenced to undergo Imprisonment for a period of three months and twenty-six days with fine ₹2,000/-. On that day, the respondent was present along with his daughter - Reshma. The

respondent was unable to engage any counsel during trial and was assisted by Amicus Curiae appointed by Delhi State Legal Services Committee. The respondent prayed for leniency on the ground that he used to help confectioners in baking chapaties and that was the only source of income to support his family. He was specifically enquired regarding his conviction under Section 27 of the Act. To which, he fairly informed that it was in 2008 for personal consumption and since then he has stopped consuming it.

3. Considering all these mitigating circumstances and no previous conviction of the respondent, lenient view was taken and the respondent was sentenced to undergo the period already spent by him in custody i.e. three months and twenty-six days. The respondent had suffered trial for about one year. At the time of apprehension along with the contraband, he was found in possession of bank pass-book of his daughter - Reshma and cash ₹28,800/-. Nothing has emerged on record if the cash recovered from the respondent was sale proceeds of the contraband. Nothing has surfaced if any incriminating article was recovered from the respondent's possession after his arrest. No further recovery of the contraband was effected from his residence or place of work. The 'source' from where the respondent had acquired the contraband was not ascertained. The purpose for which the respondent was in possession of the narcotics has also not disclosed. No independent public witness was associated at any stage of the investigation.

4. This Court in '*Narcotics Control Bureau vs. Nthadiseng Josephina Bulaya & Anr.*', 2015 III AD (Crl.) (DHC) 408 observed that the sole purpose of punishing an offender is not retribution alone and that Courts while sentencing an offender must make attempt, within parameters of law, to afford opportunity to offender to reform himself and lead life of normal,

useful member of society. In the instant case, the respondent is not a hardened criminal. Nothing has emerged on record if after release, he was found involved in any such type of criminal activity.

5. Considering the above facts and circumstances of the case, I find no merit for enhancement of the sentence. The appeal lacks merits and is dismissed.

6. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

SEPTEMBER 06, 2016 / tr

