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

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Date of Decision : May 26, 2016

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CRL.A. 332/2015

BALVINDER SINGH

..... Appellant

Represented by: Mr.Mukesh Kalia, Advocate with
Ms.Astha, Advocate

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr.Varun Goswami, APP

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J. (Oral)

1. It was the intervening night of February 25, 2012 and February 26, 2012. Ct.Ram Beer Singh PW-7, posted at P.S Kashmere Gate, PP ISBT, was on duty from 8.00 P.M. to 8.00 A.M. and saw appellant at 12.15 mid night crossing the foot over bridge carrying a brown colour bag in the right hand and a green colour bedding on his shoulder. On seeing Ct. Ram Beer Singh the appellant turned back and hasten to retreat. This conduct was suspicion. Ct.Ram Beer Singh apprehended him and questioned him. Appellant failed to gave a satisfactory answer. Ct.Ram Beer Singh informed the police post over the telephone. The information was recorded in DD No.2PP. ASI Mahender Singh PW-9 and Ct.Ashok PW-8 were deputed to proceed to the place where appellant had been apprehended by Ct.Ram Beer Singh. They took possession of the two bags which the

appellant was carrying. ASI Mahender Singh served notice Ex.PW-7/B contemplated by Section 50 NDPS Act. The appellant waived right to be searched before a Gazetted Officer as per writing Ex.PW-7/C. Nobody was willing to join the investigation. From the bag and the bedding a plastic bag each containing, what ultimately turned out to be poppy straw was seized. The samples as required by law were drawn. The recovery is 42 kg., 8 kg. less than the commercial quantity. I note that the charge wrongly alleges recovery of 44 kg. of poppy for the reason from the bag, 12 kg. and from the bedding 30 kg. poppy was recovered as per the deposition of ASI Mahender Singh PW-9.

2. I have perused the testimony of the three police officers associated with the recovery and learned counsel for the appellant is unable to point out any blemish therein. No procedural violation of any provision of NDPS Act, 1985 has been pointed out. The expert report Ex.PW-7/E concerning opinion of the seized articles has not been attacked.

3. I therefore agree with the impugned decision returning a verdict of guilt that the appellant is guilty of having committed an offence punishable under Section 15 (wrongly recorded as Section 20) NDPS Act, 1985.

4. The learned counsel for the appellant urges that as recorded by the learned Trial Judge in the order on sentence the appellant has no previous history of brush with criminal law. He had a father aged 80 years who, as of today, would be 82 years of age. He has a wife and children to look after.

5. The sentence imposed upon the appellant is to undergo RI for five years and pay fine in sum of ₹10,000/-, in default, to undergo SI for three months. As per the nominal roll the appellant has undergone a sentence of

two years and five months as of today. In my opinion ends of justice would suffice if appellant is directed to undergo the sentence already undergone.

6. The appeal is disposed of confirming the conviction but modifying the sentence.

7. The appellant shall be released forthwith.

8. Copy of this decision of the Superintendent Central Jail Tihar for updation and thereafter to be supplied to the appellant.

9. TCR be returned.

(PRADEEP NANDRAJOG)
JUDGE

MAY 26, 2016

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