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

+ **CRL.A. No.484 /2000**

Date of Decision : 8th FEBRUARY, 2017

BRIJ PAL APPELLANT
Through Mr.Mir Akhtar Hussain, Adv.

versus

THE STATE RESPONDENT
Through Mr.Panna Lal Sharma, Additional
Public Prosecutor for the State.

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

P.S.TEJI, J

1. Aggrieved by the judgment of conviction dated 8th July, 2000 convicting the appellant finding him guilty under Sections 20/61/85 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as NDPS Act, 1985) and order on sentence dated 10th July, 2000 vide which the sentence was passed against the appellant to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.1,00,000/- for the offence punishable under Section 20 of the NDPS Act, in default of payment of fine, convict was ordered to undergo simple imprisonment for two years, the present appeal has been filed.

2. The facts in brief are that a secret information was received on the basis of which the police of Narcotic Branch, on 20th January, 1995 at about 10.15 a.m., apprehended the appellant along with another accused Dhani Ram at the Main Passenger Hall,

Ajmeri Gate, New Delhi Railway Station. Notice under Section 50 of the NDPS Act, 1985 was served; search of the accused persons was effected in the presence of a public witness i.e. Mr.O.P. Tiwari, Assistant Commissioner of Police who was a Gazetted Officer. On search, 500 gram of contraband i.e. charas each was recovered from their possession. Out of 500 gram charas each recovered, 50 grams each was kept aside as sample while the remaining charas was kept in two separate parcels which was sealed with the seals of NPS and SSS. It appears from the record that the case property was seized vide seizure memo Exh.PW 6/C; CFSL form was filled in and sealed; rukka was prepared; FIR No.54/1995 was registered; case property was handed over to the SHO; accused was arrested; the sample was chemically analysed and after completion of the investigation, accused was sent for trial to the court. It further emerges from the record that on 12th September, 1995, charge under Section 20 of the NDPS Act was framed against the accused to which he pleaded not guilty and claimed trial.

3. The prosecution had examined as many as eleven prosecution witnesses namely PW 1 H.C. Ashok Kumar; PW 2 ACP O.P. Tiwari; PW 3 H.C. Mange Ram; PW 4 H.C. Suresh Kumar; PW 5 H.C. Ranbir ; PW 6 HC Lal Chand; PW 7 SI Netrapal; PW 8 Mr.Bhaskar Tripathi; PW 9 Mr.S.K. Singhala & PW 10 Inspt.S.S. Sandhu & PW 11 SI Ram Phal. The statement of the accused Brij Pal was recorded under Section 313 of the Cr.P.C.

4. The appellant was held guilty by the learned Special Judge, Delhi and by an order dated 10th July, 2000, sentenced to undergo rigorous imprisonment for ten years and fine of rupees one lakh for the offence punishable under Section 20 of the NDPS Act, 1985.

GROUND OF CHALLENGE

(a) There has been non-compliance with Section 313 Cr.P.C. inasmuch as the appellant had been convicted on the evidence and incriminating material which was never put during examination under Section 313 Cr.P.C. Seizure memo was prepared on 21st January, 2000 while PWs-2 & 10 signed the same one day earlier i.e. on 20th January, 2000. It was alleged that there was violation of Sections 50 of the NDPS Act. The document which was placed on record by the prosecution is addressed to the DCP but it was not proved to have been sent to DCP. Notice Ex.PW 6/A was prepared after the FIR was registered. As per prosecution, notice to appellant was given before arrival of PW 2 (ACP/G.O) which was contradicted by statement of PW 11 (IO) & issuance of notice to the accused is doubtful. Neither the ACP nor the SHO had witnessed the search, seizure and arrest of the appellant. The public witness was a chance witness whose whereabouts were not known and even his presence is doubtful.

5. Apart from challenging the judgment of conviction, learned counsel for the appellant further submitted that vide order dated 23rd November, 2000 passed by this court, given the facts and circumstances of the case, the sentence of the appellant was suspended during the pendency of the appeal.

6. In support of his contention, learned counsel for the appellant relied on the pronouncements of the Supreme Court in ***Bidyadhar Dolai Vs. The State 1993 Cr.L.J. 260; State of U.P. Vs. Subhash kumar Singh Tomar 2009 (2) Crimes 386 (SC); State of Delhi Vs. Ram Avtar@Rama 2011 (4) Crimes 26 (SC); Nirmal Singh Pehlwan@Nimma Vs. Inspector, Customs,***

Customs House, Punjab (2011) 12 Supreme Court Cases 298; Ashok Kumar Shamra Vs. State of Rajasthan 2013 (1) SCALE 193 & Suresh & Ors. Vs. State of Madhya Pradesh 2013 CrI.L.J. 474.

7. Per contra, arguments advanced by learned Additional Public Prosecutor for the State is that the appellant was rightly held guilty under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985. It is submitted that on 20th January, 1995, a secret information was received by the police of Narcotic Branch and the appellant and one Dhani Ram, co-accused were apprehended with contraband i.e. charas, at Ajmeri Gate, New Delhi Railway Station. It is submitted by APP that search of the accused persons was effected in the presence of a public witness and that charas weighing 500 grams each was recovered from their possession.

8. Upon hearing the rival contentions of the parties at length, evidence led is being examined.

(I) PW 7 SI Netrapal in his statement deposed that on 20th January, 1995 while posted at New Delhi Railway Station, at about 10.15 p.m., he received a secret information (vide DD No.20A) regarding possession of charas with two persons sitting at main passenger hall, Ajmeri Gate side. This witness informed PW 10 Inspt.S.S. Sandhu who directed him and PW 11 SI Ram Phal, for organising a raiding party and pursuant thereto, this witness formed a raiding party comprising of SI Ram Phal, HC Suresh & HC Lal Chand under the supervision of PW 10. The team reached the spot at 10.25 p.m. when this witness asked the informer to verify the position of the two boys who after verification, apprised that the boys are sitting at the same place where they usually sat. PW 7

further added that he requested eight to ten persons passing through the flyover, for joining the raiding party to which they denied. PW 7 next stated that at about 10.30 p.m. the raiding party under the supervision of PW 10, raided the place and apprehended the accused Dhani Ram having a cloth bag and accused Brij Pal (appellant herein) having a raxin bag. This witness identified both the accused persons present in court. Public persons available at the main passenger hall were asked to join out of whom one Bhaskar Tripathi (PW 8) voluntarily joined. This witness along with PW 11 SI Ram Phal, prepared and served notice under Section 50 of NDPS Act to the accused Dhani Ram while PW 11 SI Ram Phal served notice under Section 50 to the accused Brij Pal in his presence. The accused Brij Pal was asked to be searched before a Gazetted Officer or a Magistrate for which he replied that search could be made as the police deems appropriate and that PW 10 Inspt.S.S. Sandhu directed PW 4 H.C. Suresh Kumar who called on telephone PW 2 ACP Railway Sh.O.P. Tiwari. On the direction of PW 2 O.P. Tiwari, the then ACP, personal search of Dhani Ram was effected by this witness while SI Ram Phal was directed to give search of the accused Brij Pal, who recovered a raxin bag containing one pant, shirt and one packet containing battinuma and dallinum charas which when weighed came out to be 500 grams. PW 7 further stated that 50 grams of charas was taken out as sample while the remaining charas and sample charas were parcelled into two separate cloth parcels. This witness further stated that thereafter, PW 11 SI Ram Phal & PW 10 S.S. Sandhu affixed their seals RPS & SSS respectively on the two parcels; CFSL form was filled; both the sealed parcels & CFSL form were taken into possession vide seizure memo Ex.PW 6/C which were

handed over to PW 10; PW11 SI Ram Phal handed over seal to public witness Bhaskar Tripathi. Thereafter PW 11 prepared rukka; handed over the same to PW 6 HC Lal Chand who returned to the spot after getting the case registered. This witness added that PW 11 prepared site plan marked 'X' in his presence; recorded the statement of witnesses. PW 7 was recalled for examination when he brought the register of DD containing entry no.20A in his own handwriting, the correct copy whereof was Ex.PW 7/A.

(II) The statement of PW 7 is corroborated by the statement of PW 8 Mr.Bhaskar Tripathi who in his statement stated that on 20th January, 1995, he was present at the New Delhi Railway Station for the purpose of visiting his village at Varanasi and at about 10.30 p.m. both the accused who were present in court on the date of statement, were apprehended by the police in his presence. This witness stated that the police asked one of the persons about the information received of possession of charas and that he would be personally searched. Option was given to the accused to get himself searched or search in the presence of Magistrate or a Gazetted officer, to which the person refused and the police gave him a written notice (Exh.PW 6/A) on which he signed. The same bears the signatures of this witness at point 'A'. PW 7 further stated that some senior police officers came thereafter; accused was searched by the police in his presence and that from the possession of the accused Brij Pal, a rexin bag with four packets in a polythene was recovered and when the said packets were opened, they were found to be containing charas. Thereafter, charas of all the four packets were collected and weighed in his presence which came out to be 500 grams out of which 50 grams was separated as sample and both sample and the remaining charas was sealed. PW

8 added that seal was handed over to him after use and that the said three seals were put on both the packets again. This witness stated that accused Dhani Ram was also searched prior to Brij Pal and 500 grams of charas was recovered from his possession out of which 50 grams was separated as sample. The seizure memo Exh.PW 6/C bears the signatures of this witness at point 'A'. Thereafter one constable was sent to the police station and he came back at the spot along with some papers. The site plan was also prepared before this witness. This witness deposed that accused Brij Pal was arrested and Exh.PW 6/D bears his signatures. PW 1 HC Ashok Kumar corroborated the statement of PW 7 SI Netra Pal, IO and the statement of PW 8 Mr.Bhaskar Tripathi. PW 1 stated that while posted as D.O., Police Station NDPS, he received rukka Exh.PW 1/A from SI Ramphal Sharma through Head Ct. Lal Chand on which basis he recorded formal FIR. This witness further deposed that carbon copy (PW 1/B) of FIR was corrected by him by his own handwriting and that the same was signed by him. Statement of PW 1 has been corroborated by the statement of PW 2 ACP O.P. Tiwari who deposed that while working as ACP Railways, on 20th January, 1995 at about 10.45 p.m., he received telephonic call at residence from Head Ct.Suresh to the effect that two suspected persons had been detained in the Passenger Hall of Ajmeri Gate side at New Delhi Railway Station upon which this witness reached the spot and found both the suspected persons with two bags. PW 2 further stated that PW 10 SHO S.S. Sandhu; PW 7 SI Netarpal Singh & PW 11 SI Ram Phal were also on the spot. This witness introduced himself to the suspected persons and directed PW 11 SI Ramphal to offer his personal search to the accused/appellant but no incriminating material was recovered by

the investigating officer. He further deposed that upon his direction, PW 11 Ram Phal effected search of the accused/appellant and found four packets rolled in polithine which were found to be charas and when weighed, was found to be 500 grams. PW 2 further stated that 50 grams of charas was separated as sample which was sealed in parcel with the seal of RPS & SSS. The remaining charas was sealed in another parcel and seals of RPS & SSS were affixed thereon. Thereafter, sealed parcel and form CFSL were taken into possession vide seizure memo Exh.PW 6/C which bore his signatures; two sealed parcel & form CFSL were handed over by IO to the SHO and after giving instruction to the SHO & IO, this witness left the spot. The witness deposed that he can identify the seized rexin bag.

(III) PW 3 H.C. Mange Ram deposed that on 21st January, 1995, he was working as MHC(M) when PW 10 Inspt.S.S. Sandhu handed him two bags duly sealed with the seal of NPS & SSS along with form CFSL and entry to this effect was made by this witness at serial no.1796 & 1797 in Register No.19. PW 3 further stated that on 7th February, 1995, vide Ex.PW 3/A & PW 3/B, the samples of both the cases along with CFSL form was sent to CFSL, Chandigarh through Ct.Ranbir Singh. This witness deposed that he had brought the original which was in his hand and that original was seen and returned by him.

(IV) PW 5 HC. Ranbir in his statement stated that on 7th February, 1995, he took two parcels sealed with the seal of SSS & RPS and one CFSL form from MHC(M) vide R.C. No.138/21 for the purpose of being deposited at CFSL, Chandigarh which was deposited by him on the same date. This witness further stated that one parcel belonged to this case while the other was from an other

case.

(V) PW 6 HC Lal Chand deposed that on 20th January, 1995, while he was posted at PS, NDLS as Head Constable, PW 7 SI Netra Pal Singh got secret information regarding possession of charas with two boys at main passenger hall, Ajmeri Gate side. This witness further stated that PW 7 narrated the facts of secret information to PW 10 SHO S.S. Sandhu on the basis of which PW 10 under his supervision, formed a raiding party consisting of this witness; PW 4 HC Suresh Kumar, PW 11 Ram Phal; PW 7 Netra Pal. Thereafter, the investigating officer asked eight to ten public persons to join the raiding party but none agreed and at about 10:30 p.m., the raid was conducted at the spot. PW 6 stated that he along with PW 11 SI Ram Phal apprehended the accused Dhani Ram sitting at main passenger hall, Ajmeri Gate and possessing a raxin bag. This witness next deposed that PW 7 SI Netra Pal apprehended the accused/appellant sitting at main passenger hall, Ajmeri Gate and possessing a raxin bag. PW 6 further stated that he did not remember what happened afterwards. This witness was recalled for further cross-examination on 6th January, 2000 when he reiterated the above facts and added that no person from the nearby taxi, scooter and Tanga stand was called for joining the raiding party. PW 6 added that ACP reached the spot at about 11.05 p.m. and during that period, no recovery was made from the accused; IO had given his search to the accused before taking his search and that the proceedings took two and a half hours to complete after arrival of ACP on the spot. This witness left the spot and took the rukka at about 12.40 midnight. On his return, statement of this witness was recorded which was signed by him.

(VI) PW 9 Sh.S.K. Singhala in his statement stated that while he

was working as Senior Scientific Officer in CFSL, Chandigarh, on 7th February, 1995, he received one parcel having five seals out of which three were of SSS while two were of RPS containing Ex.1 enclosed in polythene. PW 9 stated that after conducting various laboratory tests, Ex.P 1 was found to be charas and detailed report with regard to Ex.PW 9/A bore his signature at point 'A'.

(VII) PW 10 Inspt.S.S. Sandhu in his statement deposed that while posted as SHO at Police Station NDLS, at about 10:15 p.m., PW 7 SI Netra Pal informed him about the secret information to the effect that two suspected persons having charas with them, were sitting in the Passenger Hall, Ajmeri Gate at the New Delhi Railway Station. PW 10 S.S. Sandhu directed PW 7 SI Netra Pal for forming a raiding party and that a raiding party consisting of this witness; PW 7 SI Netra Pal; PW 11 SI Ram Phal Singh; PW 4 HC Suresh & PW 6 HC Lal Chand, was formed. Information to this effect was recorded by PW 7 SI Netra Pal vide DD No.20 dated 20th January, 1995. This witness along with the raiding party reached the spot and directed the secret informer to verify about the presence of suspected persons while PW 7 SI Netra Pal informed eight-ten passersby to join but nobody agreed. PW 10 further stated that on pointing out by secret informer, the accused Dhani Ram was apprehended by SI Netra Pal while accused Brij Pal was apprehended by PW 11 SI Ram Phal & PW 6 HC Lal Chand. Thereafter, PW 7 SI Netra Pal requested some persons present there for joining the proceedings to which PW 8 Bhaskar Tripathi voluntarily agreed. This witness categorically stated that accused Brij Pal (appellant herein) had brown coloured bag in his right hand and that he was sitting along with accused Dhani Ram. Thereafter this witness apprised both the accused about the

contents of notice under Section 50 (Ex.PW 6/A) of the NDPS Act and stated that they would proceed as would be proper. This witness deposed that thereafter he directed PW 4 HC Suresh to call Mr.O.P. Tiwari, ACP Railway (PW 2); at about 11:00-11-05, PW 2 visited the spot and both the accused were interrogated. PW 10 added that he directed personal search of accused Brij Pal which was effected by SI Ram Phal and that a brown coloured rexin bag was recovered from his right hand. PW 10 next stated that the zip of the said bag was opened from which one shirt and one pant was found and beneath these clothes, one packet wrapped in light cream coloured tape, was found which upon checking was found to contain Battinuma & Dullynuma charas. He stated that charas recovered when weighed, was found to be 500 grams out of which 50 grams was separated as sample converted into pulanda with the help of cloth while the remaining charas was converted into a separate pulanda with cream coloured tape which were sealed with the seal of RPS and SSS. PW 10 stated that CFSL form was filled and seal after use was given to witness Bhaskar Tripathi. PW 10 further stated that both Pulanda & CFSL form were taken into possession vide seizure memo Ex.PW 6/C which bore signature of this witness at point 'B'. This witness stated that PW 11 SI Ram Phal prepared rukka; HC Lal Chand was sent to police station for registration of FIR who came back to the spot along with original rukka & FIR. Thereafter, this witness took both the pulandas & CFSL form; went to the police station & deposited the same with MHC(M) and that DD number 4A was made by this witness on the same day. He deposed that the accused Brij Pal was arrested in his presence and search memo (Exh.PW 6/D) was prepared. PW 10 was recalled on 17th February, 2000 for further examination when

he brought the DD register containing DD No.4A the correct copy of which was marked as Exh.PW 10/A.

(VIII) PW 11 SI Ram Phal stated that on 20th January, 1995 while he was posted at Police Station, NDLS, at about 10.00 p.m., PW 7 SI Netrapal received an information to the effect that two persons at Passenger Hall towards Ajmeri Gate having thailas (bag) in their hands, were having charas therein. PW 7 made DD Entry No.20A and intimated the same to the SHO who directed constitution of a raiding party. PW 11 further deposed that a raiding party including him; PW 10 S.S. Sandhu, SHO; PW 7 SI Netarpal; PW 6 HC Lal Chand & PW 4 HC Suresh Kumar, reached the spot at 10.25 p.m. when the secret informer was directed to identify the suspected persons. The informer thereafter pointed out that the accused were sitting on stairs. This witness deposed that on the instruction of PW 10 SHO S.S. Sandhi, he and PW 6 Lal Chand apprehended the accused Brij Pal while PW 7 SI Netarpal & PW 4 HC Suresh Kumar apprehended the accused Dhani Ram. PW 11 stated that notice under Section 50 was served upon the accused who were explained that as per the information received regarding their having charas, their search was necessary. The accused were given option to be searched either before a Gazetted Officer or a Magistrate to which they stated that they were agreeable to whatever police would desire. Thereafter, at 10.40 p.m., SHO had called PW 2 ACP O.P. Tiwari who reached the spot at 11.05 p.m. and that on the instruction of PW 2, his personal search was effected. PW 11 deposed that on the instruction of PW 2, he started proceedings; took search of the accused Brij Pal; recovered brown coloured bag with a single string from his possession which on checking, contained pant, shirt beneath wherein, a packet was

found which upon checking, found to contain charas in the form of sticks wrapped in a white colour polythene. He further deposed that the same was weighed which came to be 500 grams out of which 50 grams was separated as sample. Thereafter, notice (Ex.PW 6/A) under Section 50 of the NDPS Act, was served upon the accused. The search of this witness was taken by ACP and memo Exh.PW 6/B was prepared in this behalf. PW 11 further stated that sample charas and remaining charas were thereafter converted into two separate parcels with the help of white cloth and which were sealed with the seal of RPS & SSS respectively. Thereafter, CFSL form was filled in and both the seals were affixed thereon; parcels and CFSL form were taken into possession vide Exh.PW 6/C and the same handed over to SHO; Rukka(Ex.PW 1/A) was prepared and the same was sent through Ct.Lal Chand; site plan (Ex.PW 11/A) was prepared; accused was arrested and his jamatalashi was taken vide memo Ex.PW 6/D. PW 11 stated that after completion of the proceedings, all came back to the police station on the following day at 3.00 a.m. This witness deposed that he could identify the case property if the same was shown to him.

9. Thus, as per the testimony of PW 7 SI Netrapal, on the date of incident, upon receipt of secret information that the appellant Brij Pal and the co-accused, who were in possession of contraband i.e. charas, he informed PW 10 Inspt.S.S. Sandhu and on his direction, this witness organised a raiding party. A raid was conducted and the accused persons were apprehended sitting at main passenger hall, Ajmeri Gate side. This witness along with PW 11 SI Ram Phal, prepared and served notice (Ex.PW 6/A) under Section 50 of NDPS Act to the accused Dhani Ram while

PW 11 SI Ram Phal in his presence, served notice under Section 50 to the accused Brij Pal. This witness apprehended the accused Brij Pal (appellant herein) having a raxin bag and the accused Dhani Ram having a cloth bag. The bag was opened in the presence of this witness which was found containing one pant, shirt and one packet containing battinuma and dallinum charas which when weighed came out to be 500 grams. After preparing a separate sample packet, remaining smack was seized. Rukka Exh.PW 1/A was prepared; case was registered and the site plan was prepared in presence of PW 7. PW 10 Inspt. S.S. Sandhu testified the statement of PW 7 SI Netrapal to the effect that he was informed about the secret information and that the raid at the Passenger Hall, Ajmeri Gate side in New Delhi Railway Station, was conducted in his presence and on his direction in which accused Brij Pal was apprehended by PW 11 SI Ram Phal & PW 6 HC Lal Chand while accused Dhani Ram was apprehended by PW 7 SI Netra Pal. Similarly, the testimony of PW 8 Bhaskar Tripathi, the punch witness, corroborated and testified the statement made by PW 7 SI Netra Pal, IO as well as the statements of the raiding party i.e. PW 11 SI Ram Phal, PW 4 HC Suresh Kumar & PW 6 HC Lal Chand under the supervision of PW 10 Inspt.S.S. Sandhu. This witness categorically stated that on 20th January, 1995, when he was present at the New Delhi Railway Station, both the accused persons were apprehended in his presence. This witness further corroborated that both the accused persons were searched by the police in his presence and that 500 grams of charas was recovered from their possession out of which 50 grams was separated as sample.

10. The testimonies of PW 7 SI Netrapal and PW 10 Inspt.S.S.

Sandhu has been duly corroborated by PW 11 SI Ram Phal, PW 4 HC Suresh Kumar & PW 6 HC Lal Chand as well as the statement of PW 8 Bhaskar Tripathi. All these witnesses in a same breath have stated that raid was conducted in which the appellant and the co-accused Dhani Ram were apprehended with the contraband i.e. charas. They have also stated in the same line that the proceedings were conducted by the investigating officer and the in-charge of raiding team at the spot and that recovery of charas, its seizure, search of appellant Brij Pal as well as co-accused Dhani Ram, notice under Section 50 of NDPS Act were served upon the appellant as well as the co-accused Dhani Ram and the other proceedings were conducted.

11. All the above witnesses were cross-examined at length but the defence had failed to put any dent to their testimony. They remained unshaken with regard to conducting of raid and apprehension of the appellant as well as co-accused Dhani Ram with the contraband i.e. charas. They have also stated in a single voice that the accused persons were served with the notice under Section 50 of the NDPS Act; charas weighing 500 grams each was recovered from the appellant Brij Pal and the co-accused Dhani Ram upon them and with regard to the proceedings conducted at the spot.

12. Contention of the learned counsel for the appellant that there was no proper service of notice under Section 50 of the NDPS Act upon the appellant, is without any basis inasmuch as notice under Section 50 of the NDPS Act Exh.PW 6/A shows that after apprehension of the appellant and the co-accused, they were offered to get themselves searched in the presence of a gazetted officer or a Magistrate before conducting their search. This clearly

proves that the contents of notice under Section 50 of the NDPS Act were duly explained to the appellant before conducting his search and thus there is mandatory compliance of Section 50 of the NDPS Act by the police before conducting search of the appellant. Even ACP has stated that recovery was effected from the appellant in his presence.

13. The testimony of the raiding party members has also been duly corroborated by CFSL report which shows that when the sealed sample was opened and examined, the same was identified as charas. The CFSL report duly proves the case of the prosecution that the recovered substance from the appellant was a contraband i.e. charas.

14. The discussion made above shows that the testimony made by the police officials including the independent public witness is trustworthy and their testimony coupled with CFSL report brings the case of prosecution within the four corners of the alleged commission of offence which culminated into the conviction of the appellant. This court is of the considered opinion that the prosecution has successfully proven the guilt of the appellant.

15. As a result, no error or illegality is found in the view taken by the Trial Court and the judgment of conviction dated 18th April, 2001 and the same is upheld.

16. A prayer is made by learned counsel for the appellant to the effect that a lenient view may be taken in terms of sentence awarded to the appellant keeping in view the fact that the appellant is facing trial since 1995 and that almost twenty one years have been elapsed. Learned counsel for the appellant has further submitted that the appellant was awarded punishment under the Narcotic Drugs & Psychotropic Substances Act, 1985 which was

amended in the year 2001 and in view of the amended Act, the punishments for the offences under the Act, have been reduced. Likewise, the sentence in the present case may also be reduced.

17. In the judgment passed by the High Court of Rajasthan, it was held as under:-

“When a legislation is brought into existence, it is for the benefit of the people and the Court should give such interpretation which is not only beneficial to the person who takes benefit out of it but it should also be in consonance with the Statement of Objects and Reasons given in the Amending provisions. The Statement of Objects and Reasons appended to the Bill is as follows:

Statement of Objects and Reasons:-
Amendment Act 9 of 2001:- The Narcotic Drugs and Psychotropic Substances Act, 1985 provides deterrent punishment for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences invite uniform punishment of minimum ten years rigorous imprisonment which may extend upto twenty years. While the Act envisages severe punishments for drug traffickers, it envisages reformatory approach towards addicts. In view of the general delay in trial, it has been found that the addicts prefer not to invoke the provisions of the Act. The strict bail provisions under the Act add to their misery. Therefore, it is proposed to rationalise the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. This requires rationalisation of the sentence structure, provided under the Act. It is also proposed to restrict the application of strict bail provisions to those offenders who indulge in serious offences.

12. This Statement of Objects & Reasons itself is beneficial for the interest of the accused who are languished in jail for a considerable time on account of being minimum ten years punishment in contraband drugs and are denied right of bail as against those who are indulged in large scale quantity of drugs trafficking. This Amendment provides rationalization in the matter of grant of bail as well as in the matter of awarding sentence by distinguishing the narcotic drugs & psychotropic substances in three categories viz; (i) small, (ii) commercial and (iii) in between small & commercial. If the legislation is silent on a particular issue which is apparently in the present case about applicability of the Amending Act' In case where sentence has been passed prior to Amendment and no appeal has been filed after the Amendment, then the Court should give that interpretation which is in furtherance of the intention of the legislature given under its preamble or Statement of Objects & Reasons."

[Prema alias Prem Singh Vs. State of Rajasthan in S.B. CrI.J. Appeal No.738/2001 Dt.19.07.2007]

18. This Court on similar facts and circumstances, has held as under:-

"It is a fundamental right of every person that he should not be subjected to greater penalty than what the law prescribes, and no ex post facto legislation is permissible for escalating the severity of the punishment. But if any subsequent legislation would downgrade the harshness of the sentence for the same offence, it would be a salutary principle for administration of criminal justice to suggest that the said legislative benevolence can be extended to the accused who awaits judicial verdict regarding sentence."

[Sultan Vs. State 2004 (73) DRJ 460]

19. *India is a party to three United Nations Drug Conventions*

and to give effect to the treaties, NDPS 1985 enacted in order to provide adequate penalties for drug trafficking, strengthen enforcement powers, implement international conventions to which India was a party and enforce controls over the contraband. NDPS Amendment Act 1989 came into effect to combat drug trafficking which was influenced by the signing of 1988 Convention by India. After this amendment, people caught with small amounts of drugs faced long prison sentences and hefty fines. The said amendment of 1989 was criticized for harsh and disproportionate sentencing structure and a momentum for reform was created. By way of amended Act of 2001, scale of sentencing and fine was reduced depending upon the substance and quantity found. It basically provides for determining the amount of drugs involved in an offence while sentencing an accused. It also provides for deterrent punishment for the drug traffickers while a reformatory approach towards addicts has been adopted. Therefore, three different quantity of drugs have been involved i.e. small, commercial or intermediate while sentencing. The legislature was wise enough to provide different punishments for possessing small or commercial quantity of drugs.

20. The amended Act of 2001 is a beneficial legislation which provides for lesser punishment in case of drug addicts who are found with the lesser quantity of prohibited substance as compared to the drug traffickers who are found having commercial quantity of contraband which attracts harsh punishment and hefty fines.

21. In the present case, the appellant has already undergone about eight months incarceration for possession of 500 grams of charas. The peculiar circumstances of the present case are that the

appellant was arrested on 20th January, 1995 and as per the sentence awarded to him, he would have completed ten years in the year 2005 if he remained confined in jail for the said period. Keeping in view the judgment in the case of **Sultan (supra)** and the beneficial provisions of the amended NDPS Act of 2001, the sentence awarded to the appellant is reduced to five years with fine of Rs.50,000 /-. In default of payment of fine, the appellant shall further undergo the sentence of one year simple imprisonment.

22. The appellant is directed to surrender before the trial court concerned to serve the remainder of sentence.

23. With the above modification in the sentence of imprisonment, the present appeal is disposed of.

(P.S.TEJI)
JUDGE

FEBRUARY 08, 2017

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