

\$~R-2 (custody)

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

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Date of Decision : August 09, 2017

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CRL.A. 178/2016

ABDUL KALAM

..... Appellant

Through : Mr. M.L. Yadav, Advocate.

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Through : Mr. Kewal Singh Ahuja, APP.
ASI Mohd. Ismail, No.248/CR.
M & CP.

PRATIBHA RANI, J. (Oral)

1. The instant appeal has been preferred by the appellant Abdul Kalam assailing the judgment and order on sentence dated 4th November, 2015 and dated 18th November, 2015 respectively whereby he has been convicted for committing the offence punishable under Section 20(C) of Narcotic Drugs and Psychotropic Substances ('NDPS') Act, 1985 and sentenced to undergo RI for twelve years with fine of ₹1 lakh and in default of payment of fine to undergo SI for six months.

2. Briefly stating, the case of the prosecution is that appellant/convict was found in conscious possession of 26 KG of Ganja on 16.3.2012 at about 8 PM near Gol Chakkar, Mori Gate, Delhi. The accused was arrested and after completion of investigation, a charge-sheet was filed. Initially, the case was filed against two accused persons i.e. the appellant Abdul Kalam and one

Murasalim Sheikh. However, Murasalim Sheikh had expired during pendency of the trial.

2. The accused pleaded not guilty and claimed trial. The learned Trial Court after concluding the trial held the appellant guilty for committing the offence punishable under Section 20(C) of NDPS Act and sentenced him in the manner aforesaid.

3. Feeling aggrieved, the appellant has challenged his conviction and sentence by filing this appeal.

4. Pursuant to the production warrants being issued, the appellant has been produced from custody.

5. Mr. M.L. Yadav, learned counsel for the appellant, on instructions, submits that the appellant is not challenging his conviction under Section 20(C) of NDPS Act and prays that a lenient view be taken on the quantum of sentence. It has been submitted that the appellant is not a habitual offender. He has a large family to support and he was the only bread earner of his family. He worked as a rickshaw puller at the time when this occurrence had taken place.

6. The appellant has also placed on record an application (handwritten) wherein the appellant has mentioned he is not challenging his conviction and prays for a lenient view on the quantum of sentence.

7. Since the appellant is not challenging his conviction for being in possession of 26 kg of **GANJA**, his conviction under Section 20(C) of NDPS Act is maintained.

8. So far as prayer of the appellant on the quantum of sentence is concerned, while passing order on sentence, the learned Trial Court

has noted the following submissions:-

- (i) He is in judicial custody since 17th March, 2012.
- (ii) His family consists of three minor daughters, two sons and a wife.
- (iii) He is not a previous offender and is not involved in any other case except the instant case.

9. The learned Trial Court, after recording the submissions of the appellant and of the State that such type of offences are on rise in the society, awarded the sentence of RI for twelve years with fine of ₹1 lakh and in default of payment of fine to undergo SI for six months.

10. Taking into consideration that the recovery in this case is of **GANJA** and the appellant is not having any criminal antecedents, minimum sentence prescribed under the Act being 10 years would serve the purpose of this special legislation. At the same time, taking into consideration the poor financial condition of the appellant and his incapacity to pay the fine of ₹1 lac, making him to undergo imprisonment for a period of six months because of his poverty appears to be on higher side.

11. The issue of reducing the sentence awarded to a convict in default of payment of fine because of his financial condition has been dealt with by the Division Bench of Madras High Court in the case of ***M. Balasubramanian Vs. State 2012 Cri LJ 2486***. The relevant portion of report is extracted herein below:-

“27. When a person is very poor and because of his poverty he could not pay the fine amount and is ordered to remain in jail even after the period of substantive

sentence of imprisonment is over, a serious prejudice would be caused to the person. This principle has been laid down by the Apex Court in MANU/SC/3895/2007 : 2007 (11) SCC 243 (Shantilal vs. State of M.P.),

28. In the words of Justice V.R. Krishna Iyer, Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of human dignity and the worth of the human person enshrined in Article 21, read with Articles 14 and 19, obligates the State not to incarcerate except under law which is fair, just and reasonable in its procedural essence.

It is too obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling. To be poor, in this land of ' Daridra Narayanans' (land of poverty) is no crime and to recover debts by the procedure of putting one in prison is too flagrantly violative of Article 21 unless there is proof of the minimal fairness of his wilful failure to pay in spite of his sufficient means and absence of more terribly pressing claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from Article 11 of the Covenant. But this is precisely the interpretation we have put on the proviso to section 51, C.P.C and the lethal blow of Article 21 cannot strike down the provision, as now interpreted."

12. Taking into consideration the nature of the substance recovered from the appellant i.e. 26 kg **GANJA** and his family circumstances as well as the fact that the appellant was only a rickshaw puller, the substantive sentence awarded to the appellant for committing the offence punishable under Section 21(C) of NDPS Act is reduced from 12 years to 10 years and while maintaining the sentence of fine of ₹1

lac, it is ordered that the period of sentence required to be undergone by the Appellant in default of payment of fine is reduced to one month.

13. The appeal is partly allowed and impugned order on sentence is modified to the above extent.

14. LCR be sent back alongwith copy of this order.

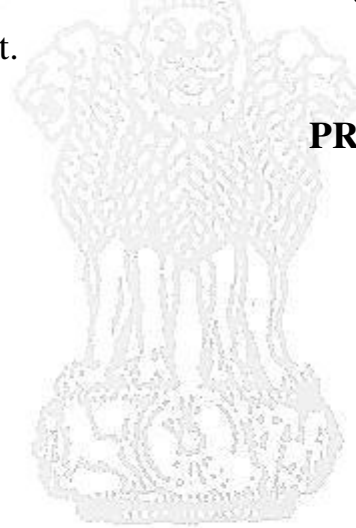
15. A copy of this order be also sent to the Jail Superintendent concerned for information and necessary compliance.

16. As prayed, copy of the order be also given *dasti* to learned counsel for the appellant.

PRATIBHA RANI
(JUDGE)

AUGUST 09, 2017

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