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

Decided on : 12th June, 2017

+ CRL.A. 861/2016

AZUBUOGU EKENE PATRIC

..... APPELLANT

Through: Mr. Sumeet Verma and Mr.
Abhijeet Sharma, Advocates with appellant
in custody

versus

STATE OF NCT OF DELHI

..... RESPONDENT

Through: Ms. Aashaa Tiwari, APP with SI
Pawan Kumar, Special Cell

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. By the appeal at hand, the appellant had brought challenge to the judgment dated 05.03.2016 passed by Special Judge, Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) in sessions case no.28/11 arising out of a report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted on conclusion of investigation into first information report no.31/11 of police station Special Cell whereby the appellant was held guilty and convicted for offences punishable under Section 21 (b) of NDPS Act and under Section 14-A of Foreigners Act, 1946 (Foreigners Act) as also to the order on sentence passed on 15.03.2016 in its wake.

2. The gravamen of the charge against the appellant in the case presented before the Special Judge primarily was that the appellant and co-accused Dennis Sopuluchukwu (since declared proclaimed offender), both Nigerian nationals, were intercepted and apprehended on 17.05.2011 at about 5.55 p.m. in the area of Sector-7, Dwarka, Delhi wherein the appellant was found having received from the co-accused a packet which, upon being checked, was found to contain prohibited substance cocaine, it being found to weigh 10 grams. It may be added that the co-accused was also found having in his possession another similar packet of same substance of same quantity. After compliance with the provisions of NDPS Act, the recovered substance was taken into possession, samples having been drawn therefrom, which upon being sent to Forensic Science Laboratory (FSL) confirmed it to be cocaine. It was found that the appellant did not have in his possession a valid passport or visa, his explanation being that he had entered India on a valid passport and visa in May 2008 for business purpose and having lost the said travel documents he had reported the matter to Indian police as also to the Nigerian Embassy, the latter having later issued, on 02.04.2013, a new passport (Ex. DW1/A) in his favour, it being valid for and upto 01.04.2018.

3. The appellant contested the case pleading not guilty to the charge that was framed on the basis of evidence presented. After trial, he was held guilty and convicted on both counts. By order dated 15.03.2016, the learned trial judge awarded rigorous imprisonment for four years with fine of Rs.5,000/- each on the two counts and in case of default in the payment of fine adding simple imprisonment of one

month each. The order on sentence noted that during investigation, the appellant had been in custody from 17.05.2011 till 16.02.2013 where-after he was enlarged on bail. This is confirmed by the nominal roll dated 09.06.2017 which, however, also indicates that during the period of release on bail, he was also arrested in yet another case, it being FIR no.15/15 of police station Crime Branch also involving offences punishable under Section 21 of NDPS Act and Section 14 of Foreigners Act, which case is still pending trial.

4. When the appeal came up for hearing, the appellant submitted that he wanted to make clean breast of his guilt and, therefore, would like to admit the facts concerning the two offences for which he has been held guilty and convicted by the trial court. As requested by the appellant, through his counsel, his statement has been recorded separately. By the said statement, he has admitted that he was found having in his possession 10 grams of cocaine on 17.05.2011 and that on the said date he did not have any valid passport or visa. Having gone through the evidence led on record, even otherwise, there is no reason why the correctness of the allegations constituting the charge for the two offences against him should be doubted. His guilt has been properly brought home by evidence adduced. In view of the facts now admitted additionally, it is clear that the conviction for the offences under Section 21(b) of NDPS Act and Section 14A of the Foreigners Act must be maintained. The appeal to that extent must be dismissed. It is accordingly disposed of.

5. Coming to the question of sentence, the nominal roll indicates that the appellant has already undergone, till 09.06.2017, incarceration

for a total period of 3 years 11 months 9 days. Having regard to the nature of offences committed, particularly the offence under Section 21 of NDPS Act, the sentence of rigorous imprisonment for 4 years as imposed by the learned trial judge on each count appears to be just and proper. However, there is merit in the prayer for reducing the rigor of the sentence to the extent of pecuniary punishment and also a need for clarification that the punishment on each count ought to run concurrently.

6. For the foregoing reasons, the order on sentence is modified, to the effect that in case of default in payment of fine, he shall undergo two days simple imprisonment on each count.

7. The appeal is disposed of with above modification of the sentence. The Superintendent Jail, Tihar shall be suitably informed with a copy of the judgment for necessary compliance.

R.K.GAUBA, J.

JUNE 12, 2017

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