

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

Date of decision: June 08, 2017

+ CRL.A. 1188/2012 & CRL.M.A. 19000/2012

KULDEEP RAJ Appellant
Through: Ms. Rakhi Dubey, Advocate

Versus

STATE Respondent
Through: Mr. Amish Aggarwala, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

%

1. The challenge to the impugned judgment of 23rd March, 2011, vide which appellant has been held guilty of illegally possessing 5.072 kgs. of diacetylmorphine (*heroin*) and order on sentence of 25th March, 2011, vide which appellant has been sentenced to rigorous imprisonment for twelve years with fine of ₹1,00,000/- and in default of payment of fine, trial court has directed appellant to undergo rigorous imprisonment of six months.

2. The facts as noted in the impugned judgment are as under:-

“The proceedings of this case have been initiated on a complaint filed by the Directorate of Revenue Intelligence (hereinafter referred to as DRI) through Sh.D.P. Saxena, Intelligence Officer against the accused

Kuldeep Raj for the offence punishable U/S 21 of the NDPS Act, 1985 on allegations that on 04.08.07 at about 05.30 pm a secret information was received by the above IO that a person of Indian Origin, of around 28 years of age and 5'7" of height, of wheatish complexion and having medium built, would be standing at the bus stand, Krishna Park, Near Pastry Palace, Vikaspuri at about 05:00 AM on 05.08.07. The above information was conveyed by the IO to his superior officers and on their directions a raiding team to be led by the above IO was constituted and the accused Kuldeep Raj was apprehended by the raiding team from the above said place, at around the time disclosed in the secret information, and at the time of his apprehension he was found carrying one black colour shoulder bag. Since the place of apprehension of the accused was a public place, he was brought to DRI Headquarters and after compliance of the provisions of Section 50 of NDPS Act, the search of the shoulder bag carried by the accused was conducted and the same was found to contain five heat sealed transparent polythene packets, the contents of which were tested and identified to be heroin and the net weight of heroin contained in the above five packets was found to be 5.072 KG. since the possession and carrying etc. of the above commercial quantity of heroin was prohibited and was an offence punishable under the provisions of the NDPS Act, a complaint U/S 21 of the NDPS Act was filed against the accused in this Court on 29.01.08 and cognizance thereof was taken on 30.01.08."

3. While relying upon the evidence of Intelligence Officer (PW3) and other witnesses, trial court vide impugned judgment has convicted and sentenced the appellant as noted hereinabove while discarding appellant's version of false implication.
4. In pursuance to the production warrants issued against appellant, he

has been produced in court in custody.

5. Learned counsel for appellant submits that though appellant has a good case on merits but since appellant has already undergone the sentence of nearly ten years, so it is submitted that a lenient view on the point of sentence be taken, as appellant is not a previous convict and is a poor person and has a family to support, which comprises of his aged parents. It is also submitted on behalf of appellant that his conduct in jail has been satisfactory and since appellant has undergone the minimum sentence of ten years prescribed for the offence in question, therefore, sentence awarded to appellant be reduced to the period already undergone and sentence of fine imposed and default clause be correspondingly reduced.

6. On the contrary, learned Additional Public Prosecutor for respondent-DRI submits that conviction of appellant is duly supported from the evidence on record and since the recovery of contraband from appellant is heavy one, so, sentence awarded is just and proper and this appeal deserved to be dismissed.

7. Upon hearing and on perusal of impugned judgment and the evidence on record, I find that the conviction of appellant for the offence in question is fully justified but the order on sentence needs to be varied in view of the fact that the purity percentage of the recovered contraband effectively reduces the quantity from 5 kgs odd to just above 2 kgs. It is so noted in paragraph No.38 of the impugned judgment. Considering the family background of appellant and the fact that his conduct in jail has been satisfactory and that he is not a previous convict, I deem it fit to

reduce the sentence awarded to appellant to the minimum i.e. to rigorous imprisonment for ten years. As per Section 21 (C) of *The Narcotic Drugs and Psychotropic Substances Act, 1985* in a case where the recovery is of commercial quantity, the minimum fine to be imposed is ₹1,00,000/- and so, no case for reduction of fine is made out as there are no exceptional reasons to reduce the fine imposed. However, the sentence awarded in default of payment of fine is reduced from rigorous imprisonment of six months to simple imprisonment of one month.

8. This appeal is partly allowed to the extent indicated above. The appeal and application are accordingly disposed of.

9. The concerned Jail Superintendent be apprised of the fate of this appeal forthwith for compliance.

(SUNIL GAUR)
JUDGE

June 08, 2017

r