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

+ CRL.A. 665/2015

GHANSHYAM @ BABLOO Appellant
Through: Mr. Anil Ralkra & Mr. Kazim
Raza, Advocates

Versus

THE STATE (NCT OF DELHI) Respondent
Through: Ms. Meenakshi Chauhan, Addl.
Public Prosecutor for State

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **ORDER**
02.06.2017

The challenge in this appeal is to appellant's conviction for the offence under Section 21(b) of *The Narcotic Drugs and Psychotropic Substances Act, 1985* on account of appellant being found in possession of 160 gms of *heroin*. Vide impugned order of 18th May, 2015, appellant has been sentenced to rigorous imprisonment for five years with fine of ₹50,000/- with default clause.

At the outset, counsel for appellant submits that there is no minimum sentence provided for the offence in question and appellant has already undergone more than 50% of sentence awarded and that he is a poor person, who is suffering from epilepsy and is having frequent seizures and so, the sentence awarded to him deserves to be reduced to the period already undergone by him and sentence of fine ought to be

reduced in view of poverty of appellant.

In pursuance to the production warrants issued on the last date of hearing, appellant is present in the Court and he has handed over a copy of history sheet ticket along with CT Scan Report, a copy of which has been furnished to learned Additional Public Prosecutor for respondent-State.

Learned Additional Public Prosecutor for respondent-State submits that though no minimum sentence is provided for offence in question but sentence awarded to appellant is well justified.

A perusal of impugned order on sentence reveals that the medical condition of appellant was brought to the notice of trial court but at that time, severity of ailment was perhaps not there. As per appellant's history sheet ticket produced by him and on perusal of CT Scan Report, it becomes evident that brain tumor of big size is there. It is relevant to extract the relevant portion of CT Scan Report and it is as under:-

“Multiple big calcified lessions are seen in bilateral cerebral and left cerebellar region with a few of them showing nodular enhancement in post contrast series

Features are suggestive of inflammatory granuloma, possibility has degenerating cysticerxcosis appears Brain Tumor Big Size likely”

It is noted in the impugned order on sentence that appellant is the first offender and is the sole bread earner of his family and has wife and children to support. Counsel for appellant submits that appellant had

been earning his livelihood by working as a Security Guard and was having a meager salary and so, not only the substantive sentence but also the sentence of fine deserves to be reduced.

Upon hearing and on perusal of impugned judgment, I find that conviction of appellant is well merited. However, order on sentence needs to be varied in view of appellant's Nominal Roll of 31st March, 2016, copy of appellant's history ticket and the CT Scan Report. I find that the facts and circumstances of this case warrant that substantive sentence awarded to appellant deserves to be reduced. Accordingly, the substantive sentence of five years awarded to appellant is reduced to two years and six months and sentence of fine is reduced from ₹50,000/- to ₹25,000/- and the sentence in default, is correspondingly reduced from simple imprisonment of one year to simple imprisonment of three months.

With aforesaid modification, this appeal is disposed of. The concerned Jail Superintendent be apprised of this order forthwith to ensure its compliance.

(SUNIL GAUR)
JUDGE

JUNE 02, 2017

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