

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

% *Date of Decision: April 06, 2018*

+ **CRL.A. 203/2011**

BALRAJ @ BANTE Appellant

Through: Mr.Faheem Shah, Advocate
with appellant in person.

versus

STATE Respondent

Through: Mr.Kewal Singh Ahuja,
Advocate.

PRATIBHA RANI, J. (Oral)

1. The instant appeal has been preferred by the appellant impugning the judgment 22.01.2011 and order on sentence dated 24.01.2011 passed in Sessions Case No.N-17/09 whereby he has been convicted for committing the offence punishable under Section 21(b) NDPS Act and sentenced to undergo RI for two-and-a-half years with fine of ₹25,000/- and in default of payment of fine, to undergo SI for six months.

2. Briefly stating, the prosecution case is that in the month of April, 2009, Inspector Rajinder Singh Sehrawat of Special Cell received an information that a person by the name Bante was engaged in trafficking of Narcotic Drugs in Delhi. Insp.Rajinder Singh deployed his source to trace Bante. On 21.04.2009 the secret informer informed him that Bante was residing in Tilak Nagar and at about 5.30 PM he would come outside the Metro Station at Janakpuri East to deliver narcotics to his associate. The said information was reduced

into writing in the Daily Diary and also conveyed to the superior officers. On the directions of the superior officers, Insp.Rajinder Singh constituted a team comprising of SI Dharmender Kumar, SI Harender Singh, SI Rakesh Malik, ASI Sanjeev Lochar, ASI Anit Tyagi, HC Rajender Kumar, HC Rajbir Singh, HC Mohd. Iqbal, HC Hans Raj, Ct.Vijender Singh and Ct.Sandeep Kumar.

3. The raiding team alongwith the secret informer left the office at about 4.45 PM and reached Shivaji Road opposite Amar Leela Hospital Janak Puri and joined one public witness namely Praveen Kumar to witness the proceedings. They all reached the place of information at about 5.15 PM. At about 5.25 PM, the accused came walking from Uttam Nagar side with a blue colour bag on his right shoulder, who the secret informer identified as Bante. Thereafter Bante stood near the staircase of the Metro Station and started waiting for someone. At about 5.45 PM, Bante started moving towards Uttam Nagar side but he was surrounded by the police party. He was informed about the secret information and also about his legal right to get his search conducted in the presence of a Gazetted Officer or Magistrate. A notice under Section 50 of NDPS Act to the above effect was also served on him. In the reply written on the notice itself, he refused to get his search conducted before a Magistrate or a Gazetted Officer.

4. Thereafter, Insp.Rajinder Singh searched the bag carried by Bante which was found containing three transparent polythenes full of brown coloured powder. The said brown coloured powder of all the three polythenes was checked with the help of Narcotics Drugs

Detection Kit and the test was found positive for smack. On weighing, the two polythene bags were found to be of 2 kgs. each and the third polythene bag was found to be of 750 gms. Thereafter, samples from each polythene bag were drawn and proceedings regarding seizure and sealing of the case property were conducted. Rukka was sent for registration of the case and the appellant was arrested in this case. After completion of investigation, chargesheet was filed.

5. The appellant pleaded not guilty to the charge framed under Section 21(b) of NDPS Act. The prosecution examined 12 witnesses all in support of its case. Statement of the appellant under Section 313 of the CrPC was recorded to enable him to explain the incriminating evidence appearing against him. After trial, the learned Trial Court held the appellant guilty for committing the offence punishable under Section 21(b) of NDPS Act observing that it was a case of recovery of 4.750 kg of heroin and as per the FSL Report, the samples contain diacetylmorphine with its purity 3.3%, 2.6% and 3.4%. It was further observed that in view of the law laid down in *Anasar Ahmed vs. State 2005 (4) RCR (Crl.) 393*, the net recovery in this case is 133.5 gms, which is an intermediate quantity but less than the commercial quantity. The appellant was sentenced for the said offence in the manner stated above.

6. Appellant is present in person alongwith his counsel. Learned counsel for the appellant, on instructions, submits that appellant is not challenging his conviction in this case. However, prayer has been made for taking a lenient view on the quantum of sentence.

7. Since the appellant is not challenging his conviction under

Section 21(b) of NDPS Act, the same is upheld.

8. Now coming on the quantum of sentence, learned counsel for the appellant submits that out of the total substantive sentence of 30 months, the appellant has already undergone the sentence of 23 months. He is 48 years old and has three daughters. He is totally blind and needs an attendant for his routine activities. Learned counsel for the appellant prays that a lenient view may be taken on the point of sentence.

9. On 27.11.2017, the appellant appeared in person alongwith his counsel and made submissions to the effect that he does not want to challenge his conviction in this case and only prayed for a lenient view on the quantum of sentence. He also placed on record his medical papers. The proceedings dated 27.11.2017 are extracted hereunder:-

“1. By way of this appeal, the appellant is challenging the judgment dated 22nd January, 2011 and order on sentence dated 24th January, 2011 whereby he was convicted under Section 21(b) of NDPS Act, 1985 and directed to undergo RI for a period of two years and six months and to pay a fine of ₹25,000/- in default to undergo SI for six months.

2. Today learned counsel for the appellant, on instructions from the appellant, who is also present in the Court, submits in writing that the appellant is not challenging his conviction in this case and a lenient view may be taken on the quantum of sentence. Learned counsel for the appellant has also placed on record medical papers of the appellant.

3. Since the medical papers placed on record pertain to the year 2016, the appellant is directed to get himself checked from any reputed government hospital to ascertain

current status of his vision and place them on record on the next date of hearing.

4. *Renotify for 15th December, 2017.*

5. *It is made clear that on the next date of hearing appellant is not required to appear in person.”*

10. Thereafter, on 20.12.2017 the appellant has placed on record the copy of the OPD slip from Dr.Rajendra Prasad Centre for Ophthalmic Sciences where he was examined on 9th December, 2017. On that date, the State sought time to verify the medical record of the appellant and submit the report.

11. On 05.01.2018, the State filed the report from Dr.Radhika Tandon, Professor of Opthamology, Dr.R.P.Centre for Ophthalmic Sciences, All India Institute of Medical Sciences, New Delhi, which is to the following effect:

“As per available record, the patient was seen in unit 6 OPC on 09 Dec. 2017. He was noted to have features of pseudophakia both eyes with choroiditis both eyes with past record of traumatic cataract and traumatic optic neuropathy, was lost to follow up and had come back for handicap certificate. His vision was documented as right eye no light perception and left eye only light perception with inaccurate projection.

He was advised to submit the application for handicapped certificate and also guided to show in Neuro-Ophthalmology clinic and urea clinic for expert opinion and further management”

12. Today the appellant has been brought to the Court on the wheelchair. Pursuant to the order dated 23.03.2018, the appellant has

also placed on record the certificate issued by Dr.Pushpendra N.Renjen, Senior Consultant Stroke, Coordinator-Neurology, Apollo Hospital, New Delhi to the following effect:-

'This is to certify that Mr.Balraj S.K. is having suffered fromvisual loss. He has a lymphoma in the brain. He cannot attend to his work.'

13. Taking into consideration the submissions made on behalf of the appellant and his present status that he is totally blind now and has already undergone the substantial part of the substantive sentence awarded to him in this case i.e. 23 months out of the total substantive sentence of 30 months, the substantive sentence awarded to the appellant for committing the offence punishable under Section 21(b) of NDPS Act is reduced to the period already undergone by him in this case. However, the fine imposed on the appellant is enhanced. The sentence of fine awarded by learned Trial Court is enhanced from ₹25,000/- to ₹35,000/-.

14. Learned counsel for the appellant submits that vide order dated 21.02.2011, the substantive sentence of the appellant was suspended till disposal of the appeal and since there was no direction for depositing the fine amount while suspending the substantive sentence of the appellant, the fine amount was not deposited. Learned counsel submits that the appellant is ready and willing to deposit the fine amount of ₹35,000/- (₹25000/- imposed by the learned Trial Court and the enhanced fine amount of ₹10,000/- by this Court).

15. The appellant is directed to deposit the fine amount of ₹35,000/- with the Registry within two days and place on record the copy of the

receipt.

16. It is made clear that if the fine amount of ₹35,000/- is not deposited by the appellant today itself, he shall undergo SI for six months in default of payment of fine.

17. The appeal is partly allowed modifying the order on sentence to the above extent.

18. TCR be sent back alongwith copy of this order. Copy of this order be sent to the concerned Jail Superintendent for information.

As prayed, copy of the order be given dasti to learned counsel for the appellant under the signature of Court Master.

APRIL 06, 2018

'st'

**PRATIBHA RANI
(JUDGE)**