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

DECIDED ON : 28th MAY, 2018

+ **CRL.A. 274/2018 & CRL.M.B. 386/18**
OBIORA IKENNA SUNDAY Appellant
Through : Mr.Archit Upadhyay, Advocate.

versus

STATE Respondent
Through : Mr.Ravi Nayak, APP.

CORAM:
HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J. (Oral)

1. Present appeal has been preferred by the appellant to challenge the legality and correctness of a judgment dated 31.01.2018 of learned Addl. Sessions Judge in Sessions Case No.655/2017 arising out of FIR No.70/2012 PS Fateh Pur Beri whereby he was convicted for committing offences punishable under Section 21(b) of NDPS Act and Section 14 of Foreigners Act, 1946. By an order dated 05.02.2018, the appellant was sentenced to undergo RI for three years with fine ₹25,000/- under Section 21(b) of NDPS Act and RI for three years with fine ₹10,000/- under Section 14 of Foreigners Act, 1946. Both the sentences were to operate concurrently.
2. Allegations against the appellant were that on 12.03.2012 at about 10.15 p.m. near Arjun Garh Metro Station, he was found in

possession of 8 gms of cocaine without licence; he was further found to have overstayed in India after the expiry of the visa on 07.02.2010.

3. To prove its case, the prosecution examined twelve witnesses and relied upon several documents. In 313 Cr.P.C. statement, the appellant pleaded false implication. The Trial resulted in conviction as mentioned previously.

4. During the course of arguments, the learned counsel, on instructions, stated at Bar that the appellant has opted not to challenge the findings of the learned Trial Court on conviction. He, however, prayed to modify the sentence order as the appellant has undergone substantial period of incarceration and is not a previous convict. He wishes to go back to his country. Learned APP has no objection to consider the mitigating circumstances.

5. Since the appellant has given up challenge to the findings on conviction, the conviction stands affirmed under both the heads.

6. Regarding modification of the sentence order, it reveals that the appellant has suffered the ordeal of trial / appeal since 2012. Nominal Roll dated 02.05.2018 reflects that he is not a previous convict and his overall jail conduct is satisfactory. He has already undergone two years and fifteen days incarceration as on 01.05.2018. He is not involved in any other criminal case and his antecedents are clean. Sentence order records that the appellant has a daughter aged around 9 years in Nigeria and none is there to look after her. It further records that the appellant remains sick. Learned counsel for the appellant informs that during trial, he remained in the custody of

FRRO for five months and that period also requires to be taken into consideration.

7. Considering the facts and circumstances of the case, the period already undergone by the appellant in this case is taken as a substantive sentence. Other terms and conditions of the sentence order are left undisturbed. The appellant shall deposit the fine as imposed with the Trial Court. On release, the appellant shall be handed over to FRRO for immediate deportation.

8. The appeal stands disposed of in the above terms.

9. Copy of the order be sent to the Trial Court for information.

10. Intimation be sent to the Superintendent jail.

11. Pending application also stands disposed of.

(S.P.GARG)
JUDGE

MAY 28, 2018 / tr