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

+ W.P.(CRL) 738/2017 & CrI.M.A.No.4016/2017

SIRAJ KHAN

..... Petitioner

Represented by: Mr.Dwarka Sawale, Advocate

versus

APPELLATE TRIBUNAL FOR

FORFEITED PROPERTY NEW DELHI & ANR. Respondents

Represented by: Mr.Vinod Diwakar, CGSC

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

19.04.2018

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1. By this petition, the petitioner seeks quashing of the impugned order dated 19th December, 2016 passed by the respondent No.1-Appellate Tribunal for Forfeited Property New Delhi in Appeal No.FPA-ND-3/LKW/2002.

2. Brief background of the case is that the petitioner was arrested on 5th February, 2007 in case FIR No.250-A/1999, PS CNB, Lucknow under Sections 8/21/29 and 8/25, NDPS Act based on the confessional statements of two accused namely Abdul Gafoor and Mohd.Shabir who were found in possession of 10.700 kgs of heroin in a car travelling from Kanpur to Calcutta. Preventive detention orders were passed against the petitioner and the co-accused and simultaneously proceedings under Section 69(1) and (3) of the NDPS Act for confiscation of the properties illegally acquired were also initiated. During the course of the proceedings before the Competent

Authority at Lucknow despite issuance of notice, the petitioner failed to submit any reply nor appeared for personal hearing. Thus the immovable property owned by the petitioner i.e. the triple storey shopping complex at Khata No.408 and the moveable property Green 118 NE Premier car valued at ₹15,00,000/- and ₹2,00,000/- were forfeited to the Central Government. After the order of forfeiture was passed, pursuant to a full-fledged trial, petitioner was acquitted in the complaint filed by the CNB Lucknow under Sections 8/21/29 and 8/25, NDPS Act vide judgment dated 23rd December, 2012. The petitioner thus filed an appeal before the Appellate Tribunal for forfeited properties in the year 2013 wherein the learned Tribunal passed the impugned order dated 19th December, 2016 directing the appellant to deposit the cost as directed vide order dated 21st November, 2016 and also recorded the undertaking of the petitioner to deposit a sum of ₹30,00,000/- in three instalments without prejudice. This order dated 19th December, 2016 whereby an undertaking for deposit of a sum of ₹30,00,000/- in three instalments was recorded is under challenge in the present writ petition.

3. Case of the petitioner is that the petitioner having been acquitted in the main offence, his property was liable to be freed from confiscation and also that an undertaking of the petitioner to deposit a sum of ₹30,00,000/- which was far above the value of the confiscated property could not have been taken by the Learned Tribunal.

4. Learned counsel for the respondent opposing the present petition submits that despite the order of the confiscation passed by the Competent Authority on 15th February, 2002, the petitioner sold both the properties noted above i.e. the triple storey shopping complex at Khata No.408 and the Green 118 NE Premier car.

5. When this petition came up before this Court on 11th May, 2017, while issuing notice, this Court directed that the order dated 19th December, 2016 be kept in abeyance.
6. Having heard learned counsel for the parties and noting that the properties forfeited to the Central Government even as per the estimation of the respondent were worth ₹15,00,000/- and ₹2,00,000/- respectively in the year 2002 and the second property being the Green 118 NE Premier car which would have further diminished in value, this Court finds that the undertaking recorded before the Learned Appellate Tribunal to deposit a sum of ₹30,00,000/- as pre-deposit to the hearing of the appeal is onerous and unwarranted.
7. Considering the facts noted above and that the property which was confiscated was sold by the petitioner despite attachment order, this Court directs the petitioner to deposit a sum of ₹10,00,000/- with the respondent as pre-deposit to the hearing of the appeal.
8. Writ petition and the application are disposed of.
9. Order dasti.

MUKTA GUPTA, J.

APRIL 19, 2018

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