

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Decided on: 22nd November, 2018**
+ **CRL.A. 284/2016**

ANSELEM LYKE NWOSO ... Appellant
Represented by: Mr.J.S.Kushwaha, Advocate
versus

DIRECTORATE OF REVENUE OF INTELLIGENCE...Respondent
Represented by: Mr.Satish Aggarwala, Advocate

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl.M.B. No. 1600/2018 (suspension of sentence)

Since arguments have been heard in the appeal itself, application seeking suspension of sentence is dismissed as infructuous.

CRL.A. 284/2016

1. Appellant challenges his conviction for offence punishable under Section 21(C) of the Narcotics Drugs and Psychotropic Substance Act (in short 'NDPS Act').
2. Case of the prosecution initiated on receipt of a secret information on 17th May, 2009 that a Maruti 800 car bearing registration No.DL 8C D5616 was parked unattended and unlocked near the bus stop Vikas Kunj Society, Vikas Puri on the road leading to Piragarhi. A shoulder bag containing narcotic drugs is also kept in the car and around 8.30 p.m. a person of African origin with short height would come to pick up the shoulder bag. A raiding team was constituted with search authorization Ex.PW-7/A being granted in favour of Shri Jyothimon Dethan (PW-7) for search of the car. On reaching the spot they saw the Maruti car bearing No.DL 8C D5616 parked about 100 meters away from the bus stop on the

road leading towards Piragarhi. Surveillance was kept.

3. At around 8.30 p.m. Jyothimon Dethan noticed one African national coming towards the car. After reaching near the car he waited and watched for 2-3 minutes and then opened the back door of the car and picked up a blue and red colour shoulder bag which was kept on the back seat and started moving towards Peeragarhi side. It is at that stage that the appellant was intercepted whose identity was revealed as Anselem Lyke Nwosu, a resident of Nigeria. After a notice under Section 50 NDPS Act was given, from the bag 11 heat sealed transparent polythene packets containing white cloth bags having rubber stamp marking on each of them were recovered. Nothing further incriminating was found in the car. Since it was getting late in the evening and dark, the raiding team was advised not to conduct detailed search at the spot. Hence, 11 packets recovered and seized along with the shoulder bag and the Maruti Car were taken to the office of the DRI at ITO.

4. On examination, the 11 packets were found to be containing heroin weighing 11.019 kg. and two samples of 5 gm each from each of the packets were taken. After necessary formalities, statement of the appellant was recorded under Section 67 NDPS Act who disclosed that one Mr.Buddy had asked him to bring the contraband from the said car which was parked near the bus stop, Vikas Puri. However, the appellant did not disclose the address of Mr.Buddy. The appellant had come to India on 28th April, 2008 on medical visa and was residing in Vikas Puri area in a rented accommodation. Search was also conducted at the premises where the appellant was residing as a tenant, from where two plastic bottles/jars were recovered containing white colour powdery substance weighing 0.962 kg.

giving positive test of heroin. Two samples marked A-1 and A-2 were taken from said bottles/jars which were marked as B-1 and B-2 and were sealed.

5. The car in question was found to have been purchased by one Avinash Sharma to whom the vehicle was sold by M/s.Shakti Auto Deals, however, Avinash Sharma could not be traced. Summons were issued to M/s.Shakti Auto Deals and statement of Kamal Kishore was recorded who stated that the car was sold to Deep Preet Singh who sold it to Avinash Sharma. Deep Preet Singh was examined as PW-16 who stated that he had sold this vehicle to Avinash Sharma but he did not know his whereabouts. After complaint was filed, witnesses of the prosecution deposed on the lines as noted above.

6. Statement of the appellant was recorded under Section 313 Cr.P.C. wherein he claimed that he was falsely implicated. He further stated that on 17th May, 2009 at about 6.30 p.m. he was picked up at gun point when he was walking down with his friend to buy watermelon near Vikas Puri. Later he came to know that said persons were officers of the DRI. He was beaten and his family details were taken and then he was made to sign on blank papers. He did not pick up any packet from the car. Appellant appeared as DW-1 and reiterated what he stated in his statement under Section 313 Cr.P.C. He proved his retraction statement vide Ex.DW-1/A.

7. Learned counsel for the appellant has taken this Court through the evidence of all the material witnesses recorded during the course of the trial. He contends that the samples were not drawn at the spot where the appellant was apprehended and the learned Trial Court failed to consider the retraction statement. No efforts were made to join the public witness during the

search and seizure and that one of the panch witnesses was not examined.

8. A perusal of the evidence led reveals that the prosecution examined as many as 16 witnesses including Jyothimon Dethan (PW-7) who deposed about the raid and seizure, P.K.Singh (PW-9), who deposed about the search authorization and Yogesh Chaudhary (PW-10) who spoke about the information received. Statement of Jyothimon Dethan is supported by R.Roy (PW-14) member of raiding party and Yogesh Chaudhary.

9. As noted above, the witnesses of the raid stated that considering the population in the area it was not conducive to carry out the raid at that time hence the appellant was taken to the office of the DRI. No illegality can be attributed to this action. Further, efforts were made to associate public witnesses who did not come forward. The retraction statement of the appellant was written by the jail visiting counsel and was belated. No such facts as noted in the retraction statement were stated by the appellant when he was produced before the Court for remand soon after arrest.

10. Considering the evidence on record, this Court finds no error in the impugned judgment of conviction. As regards the quantum of sentence is concerned, appellant has been awarded sentence of rigorous imprisonment for a period of 10 years and a fine of ₹1 lakh which is the minimum prescribed, hence does not warrant interference. The sentence in default of payment of fine awarded to the appellant is six months' simple imprisonment, this Court deems it fit to modify the order on sentence to the extent that the appellant will undergo rigorous imprisonment for a period of 10 years and pay a fine of ₹1 lakh in default whereof to undergo simple imprisonment for a period of 2 months.

11. Learned counsel for the DRI prays that the case property be

permitted to be destroyed and the Maruti Car be also permitted to be confiscated and disposed of. It is directed that the case property be destroyed by the competent authority of the respondent as per the rules and regulations of the respondent. The car seized be confiscated and disposed of in accordance with law. A report be submitted under the signatures of the Joint Director, DRI with regard to the disposal of the case property before this Court.

12. Appeal is disposed of.

13. Copy of this order be sent to the Superintendent, Mandoli Jail for updation of jail record and information to the appellant.

(MUKTA GUPTA)
JUDGE

NOVEMBER 22, 2018
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