

\$~21

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

+ CRL.A. 1325/2014

NARCOTICS CONTROL BUREAU Appellant
Through Mr. Subhash Bansal, Standing Counsel

Versus

MIKE KARIMAZONDO & ORS Respondents
Through Mr. Gaurav Chandhok, Adv. for
respondent nos. 1 and 3

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
16.01.2018

%

CRL.A. no. 1325/2014 & CrI. M.A. no. 14860/2014

Vide judgment dated 23rd April, 2014 respondent no. 1 Mike Karimazondo and respondent no. 3 Shila Khumalo were convicted under Section 9A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act”, for short), an offence punishable under Section 25A of the NDPS Act. Vide order on sentence dated 12th May, 2014 respondent nos. 1 and 3 were sentenced to undergo rigorous imprisonment for 1½ years and to pay fine of ₹50,000/- each; in default of payment of fine to undergo simple imprisonment for 30 days.

Petitioner Narcotics Control Bureau is aggrieved by the sentences awarded to the respondent nos. 1 and 3, hence, this appeal. It is contended that

Pseudoephedrine hydrochloride, weighing 25.5 kg and 25.350 kg respectively, was recovered from the respondent nos. 1 and 3. Pseudoephedrine hydrochloride is a controlled substance and was brought by the respondent nos. 1 and 3 in contravention of the order issued by the Central Government under Section 9A of the NDPS Act, thus, committed offence punishable under Section 25A of the Act, for which maximum punishment of ten years was envisaged. Trial court ought not to have handed down only 1½ years sentence to the respondent nos.1 and 3. Reliance has been placed on Union of India vs. Kuldeep Singh, AIR 2004 Supreme Court 827.

I have perused the judgment relied upon by the learned counsel and I find the same to be in the context of different facts. In the said case, 800 litres of Acetic N. Hydride was recovered, which could have been used for producing 300 kg of heroin. Keeping in mind this fact Supreme Court held that High Court was not justified in reducing the sentence as awarded by the trial court.

In this case, keeping in mind the quantity of the controlled substance recovered from the respondent nos. 1 and 3 and also the adverting circumstances that respondent nos. 1 and 3 were only carriers with poor family background, inasmuch as, were having their families in South Africa, I do not find the sentences awarded by the trial court to be inadequate, any illegality in

the impugned order on sentence. Accordingly, appeal is dismissed.

Learned counsel for the respondent nos. 1 and 3 submits that respondents were transferred from the Central Jail Tihar to FRRO for deportation. However, in view of the pendency of the present appeal, respondents nos.1 and 3 were released by the FRRO. Appeal has already been disposed of, therefore, respondent nos.1 and 3 be referred to FRRO for their deportation, in accordance with law. Accordingly, it is ordered that the respondent nos. 1 and 3 shall surrender before the FRRO, New Delhi immediately for deportation.

Dasti.

Crl. M.A. no. 1046/2015

Learned counsel for the respondent nos. 1 and 3 has no objection if the application is allowed. Appellant is permitted to dispose of the seized property, in accordance with law.

A.K. PATHAK, J.

JANUARY 16, 2018

r.bararia