

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 687 OF 2009

Mr. Bobby Nna Nobie.

Nigerian National

Age : 44 years,

P.P. No. A1809234,

R/at: No. 2, Okesuna Street,

Suru-Lere, Lagos,

Nigeria.

..Appellant.

V/s.

1 Union of India

(through NCB, Mumbai).

2 The State of Maharashtra.

..Respondent.

Mr. Vaibhav Kulkarni, advocate appointed for the appellant.

Mr. S. R. Agarkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : APRIL 15, 2019.

JUDGMENT :

1 The appellant herein is convicted for the offence punishable under section 8(c) read with section 21(B) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to suffer R.I. for 5 years and to pay fine of Rs. 10,000/- I.d. to suffer R.I. for 3 months for offence punishable under section 8(C) r/w. 21(B) of the NDPS Act. For offence punishable under section 29 read with section 21(B) of the NDPS

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Act, the appellant is sentenced to suffer R.I. for 5 years and to pay fine of Rs. 10,000/- I.d. to suffer R.I. for 3 months by Special Judge for NDPS, Gr. Mumbai vide Judgment and Order dated 27/2/2009 in NDPS Special Case No. 32 of 2004. Hence, this appeal.

2 Such of the facts necessary for the decision of this appeal are as follows :

(i) That on 21/1/2004 NCB Zonal Office has received a secret information that appellant was to reach Gaurav city in the morning located at Beverly Park, Miraroad from Mandsaur, Madhya Pradesh with more than 10 kgs. of heroin.

(ii) The NCB therefore, reached the said place at about 1 p.m. The flat was opened by the original accused No. 2 i.e. Sunny Okolie. It was seen that there were 3 other persons of Indian region including lady who was African national. The premises were searched. They had found 3 packets containing light brown colour powder from below the bed.

(iii) Upon verification, the officers of the NCB were sure that it was heroin. Thereafter, they had followed procedure of investigation. While conducting search of Flat No. 201, they had found the passport of accused Nos. 2 and 10 other documents. The said documents were seized. All incriminating articles were seized.

(iv) It had further transpired that accused No.1 had brought 6 kgs.

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of heroin sealed in roof of Mahindra Jeep in which they had travelled from Rajasthan to Madhya Pradesh. He had also disclosed that he had sealed 5 kgs. of heroin in a secret compartment.

(v) Two keys were recovered from him, which were of Flat No. 202. In the search of flat No. 202, they had found 3 packets containing heroin. They had drawn samples and sent it to forensic science laboratory at Kalina. The report confirms the Di-acetyl Morphine.

3 Upon perusal of evidence, it is clear that the NCB had followed all the mandatory procedure in the course of investigation. At the trial, the prosecution examined as many as 17 witnesses to bring home the guilt of the accused. The statement of accused was recorded under section 67 of the NDPS Act. The statement of the accused No.1 is at Exh. 120. He has stated in his statement that after accused No. 1, 4 to 6 arrived near Gaurav city, the accused No. 6 picked 6 packets of heroin from the soft hood of the jeep and handed over to accused No. 5, who in turn gave to accused No. 1. Hence, it is clear that the rest of the accused has only assisted the original accused No. 1. Principal role was attributed to original accused Nos. 1 to 4. They were rightly convicted by the learned Judge upon perusal of the evidence adduced by the prosecution. The appellant was in custody from 21/1/2004. The appellant has undergone the substantive sentence as well as the default

sentence and has been released from jail and the present appellant Bobby Nobie has been released from jail on 28/2/2009 i.e. after undergoing his substantive sentence. The findings recorded by the learned Special Judge are in consonance with the evidence adduced by the prosecution and call for no interference. Hence, appeal stands dismissed and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]