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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30th July, 2019

+ CRL.A. 887/2002 and Crl. M.A. 12247/2019 and 31654/2019

ABDUL JABBAR

..... Appellant

Through: Mr. S.A. Khan, Advocate

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP with
SI Sumit Kumar, Spl. Cell Janakpuri

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appellant Abdul Jabbar was brought to trial in the court of Sessions (in Sessions no.64/2001) with two others (Mohd. Asgar Konshi and Gurinderjeet Singh) on the basis of report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) submitted upon conclusion of investigation into first information report (no.168/2001) of police station Parliament Street involving offences punishable under Sections 121, 121A, 122, 123 of the Indian Penal code, 1860 and Sections 3,4 & 5 of Explosive Substances Act, 1908. At the conclusion of the said trial, he (the appellant) and the other said two were found guilty and convicted by the court of

sessions by judgment dated 02.09.2002 for the offence under Sections 4(a) and (b) of Explosive Substances Act, 1908. By order dated 06.09.2002, the trial judge awarded rigorous imprisonment for seven years for the said offences giving the benefit of provision under Section 428 Cr. PC.

2. The conviction and order of sentence were challenged by the appellant by the present appeal, the sentence having been suspended and he having been released on bail pending hearing and adjudication on the appeal by order passed earlier in the course of these proceedings.

3. The appeal was admitted and directed to be taken up from the list of regulars in due course. Its turn for hearing and decision has come up seventeen years' after it had been presented, the circumstances against the backdrop of which the case had been instituted being eighteen years' old.

4. It is noted that both co-convicts viz. Mohd. Asgar and Gurinderjeet Singh had also brought similar appeals Crl. A 773/2002 and 824/2002 respectively.

5. The appeal of Mohd. Asghar was not prosecuted or pursued, he having suffered the sentence awarded, his said appeal against this backdrop having been found to be infructuous and disposed of accordingly by an order passed on 07.05.2014 by a coordinate bench of this court. It has been pointed out that the said co-convict Mohd. Asghar Konshi had

later filed another appeal (Crl. A. 932/2005) which appeal was partly allowed by order dated 04.04.2006 of the coordinate bench giving benefit of similar reduction of sentence in his favour as was granted to Gurinderjeet Singh, as noted hereinafter.

6. The appeal of Gurinderjeet Singh, on the other hand, came up before another co-ordinate bench on 04.04.2006. The sentence in that case was reduced, modified and restricted to the period of five years ten months as was the period of incarceration the said person had undergone. The appeal was disposed of with such modification in the order of sentence.

7. Referring to the above decisions in the case Crl. A. 824/2002 of co-convict Gurinderjeet Singh, and Crl. A. 932/2005 of co-convict Mohd. Asghar, the appellant has moved the application (Crl. M.A. 31654/2019) seeking reduction in the rigour of sentence. It is pointed out by him that the petitioner has a large family to support, he being the sole bread earner, not involved in any crime other than the one in the case at hand. He also refers to certain domestic problems suffered by him wherein his younger daughter was subjected to an offence under Section 6 of the Protection of Children from Sexual Offences Act, 2012, it having become subject matter of FIR no.27.2019 of Mahila Police Station, Faridabad.

8. It is noted that as per the nominal roll dated 24.07.2019 sent by the Superintendent, Central Jail-2, the appellant had undergone incarceration for over three years' four months and twenty eight days, he having also earned remission for the period for nine months. It is not disputed that there is no past criminal record in respect of the appellant. It is not the case of the State that he has been involved in any other crime after he came to be implicated in the present case. In these circumstances, having regard to the long period that has elapsed and on parity with aforementioned co-convicts, this court deems it proper that prayer for reduction of sentence be granted. The period of detention already undergone during the period of investigation and trial shall be treated as the period of sentence imposed against the appellant.

9. With this modification, the appeal and the applications filed therewith are disposed of.

JULY 30, 2019

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R.K.GAUBA, J