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

+ **CRL.A. 893/2017 & CRL.M.A. 15804/2017 (delay)**

STATE (GNCT OF DELHI)

..... Appellant

Through: Ms Kusum Dhalla, APP for State.

versus

RAJBIR YADAV

..... Respondent

Through Mr S.S. Das, Advocate
SI Prem Kumar, P.S. Mehrauli.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.11.2019

1. The appellant State has filed the present appeal seeking enhancement of the sentence awarded to the respondent.
2. The respondent was convicted of an offence under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985.
3. The Trial Court had found that the respondent was in possession of five kilograms of *Ganja*. Admittedly, the said quantity was more than a 'small quantity' but was less than a 'commercial quantity'. Accordingly, the Trial Court has sentenced the respondent to undergo Rigorous Imprisonment for a term of one year and fine of ₹10,000/-. In default of the payment of the fine, the respondent was directed to serve simple imprisonment for a further period of two months.
4. It is the appellant's case that the said sentence is inadequate and is required to be enhanced.

5. In terms of Section 20(a)(ii)(B) of the NDPS Act, the punishment for the offence of being in possession of a quantity less than commercial quantity but greater than small quantity, may extend to ten years. Unlike, the punishment prescribed for being in possession of commercial quantity, there is no minimum period of sentence prescribed for being in possession of such quantity. However, it is relevant to note that the punishment for possession of small quantity is a term of imprisonment that may extend to a period of one year. Thus, according to the appellant, in normal circumstances, the punishment ought to have been more than one year.

6. However, in the present case, it is noticed that the respondent has already undergone actual custody of two years, ten months and twenty days as an undertrial prisoner.

7. In view of the above, this Court does not consider it apposite to interfere with the impugned order as it would, clearly, not be apposite to enhance the sentence to over and above what has already been served by the respondent.

8. The appeal is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

NOVEMBER 19, 2019

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