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

% *Date of Judgment: 25th September, 2020*

+ **CRL A. 610/2016 & CRL.M.(BAIL) 1935/2017, CRL. M.A. 12929/2019, CRL.M.A. 42346/2019, CRL.M.A. 8363/2020 & CRL.M.A. 12817/2020**

GIRDHARI LAL BHAGAT Appellant
Through: Ms Alka Singh and Mr Vaibhav
Tomar, Advocates.

versus

DIRECTORATE OF INTELLIGENCE Respondent
Through: Mr Satish Aggarwala, Standing
counsel for DRI.
Mr Amit Gupta, Amicus
Curiae.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

1. The learned counsel for the parties were heard through video-conferencing.

2. The appellant has filed the present appeal impugning a judgment dated 10.03.2016, whereby he was convicted of an offence punishable under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereafter referred to as 'NDPS Act'). He also impugns an order dated 29.03.2016, whereby he was

sentenced to twelve years of rigorous imprisonment with a fine of ₹100,000/- and in default of payment of fine to undergo simple imprisonment for a period of one year for the offence under Section 21(c) of the NDPS Act.

3. It is the prosecution's case that on 02.02.2010 at about 06:10 pm, Guljeet Singh, Intelligence Officer, DRI (HQ) received secret information that a truck bearing Registration No. JK 08A 2037 would be parked near Gurudwara Siraspur, Delhi at about 08:00 on the next day (that is, 03.02.2010). The said truck would be carrying the narcotic drugs and if the same is searched, the illicit drugs would be found. The said information was reduced into writing and placed before the Deputy Director of DRI who directed Sh. Rajeev Kumar Sadana, Intelligence Officer, DRI to take the necessary action.

4. Pursuant to the said authorization, a raiding team of officials was constituted. In addition, two persons from the public were also included. The said team left for Gurudwara Siraspur in the morning of 03.02.2010 and reached there at about 07:30 am. At about 08:00 am, the officers noticed a truck bearing the No. JK 08A 2037. Two persons were sitting inside the said truck. The driver was, subsequently, identified as Joginder Lal and the appellant was sitting on the adjacent seat. The said two persons were informed about the secret information. They were, thereafter, served with notices under Section 50 of the NDPS Act and their right to be searched before a Gazetted Officer or a Magistrate was explained to them. The said persons exercised their right to be searched in presence of a Magistrate/Gazetted Officer. The

truck was, thereafter, driven to the parking lot of DRI Office situated at D-Block, I.P. Bhawan, I.P. Estate, New Delhi. Joginder Lal and the appellant were searched in the presence of Sh. B.P. Banerjee, appraiser, who is a Gazetted Officer. The Truck in question was also searched and one HDPE Bag was found behind the driver's seat. The said bag was found to contain fifteen heat sealed transparent polythene packets. These fifteen polythene packets, the HDPE bag and certain documents recovered from the vehicle were then taken to the DRI Office. All the polythene packets were examined and were marked as X-1 to X-15.

5. On opening of the said heat sealed packets, it was found that they contained packets made of a white cloth bearing certain rubber marking. It was found that these contained transparent polythene containing off white granular substance. Polythene packets marked as X-3, X-4, X-6, X-8, X-9, X-12 and X-15 were wet. The substances in each of the polythene packets were tested with the help of the narcotic drug detection kit and the result indicated presence of heroin in the substances.

6. Two samples of five grams each were taken from the packets and these samples were kept in a zip locked polythene pouches. All the fifteen bags were weighed and it was found that the total weight of the substance recovered was 17.32 kgs.

7. The samples drawn along with their test memos were forwarded to the Chemical Examiner, Central Revenue Control Laboratory

(CRCL).

8. The Chemical Examiner submitted a report confirming that all fifteen samples had tested positive for the Diacetylmorphine (Heroin) with purity ranging from 53.4% to 77.7%.

9. During the investigation, the residential premises of the appellant was also searched. However, nothing incriminating was found except a pocket diary showing certain transactions and phone numbers.

10. Sh. Joginder Lal had in the first instance, on being accosted by the raiding team, stated that he was hired by the appellant to drive the truck and was unaware of the contents of the truck or any drugs.

11. A complaint was filed against the appellant for committing offences punishable under Sections 21(c) and 25 of the NDPS Act. On 27.07.2010, the Court took cognizance of the said offences and accordingly, charges were framed. The appellant pleaded not guilty and the matter was set down for trial.

12. The prosecution examined nineteen witnesses. Sh. Rajeev Kumar Sadana, Intelligence Officer was examined as PW1. His testimony comprehensively sets out the case of the prosecution and the recovery of the contraband. Sh. B.K. Banerjee, SIO, DRI Headquarter was examined as PW4. He testified that the accused and the truck were searched in his presence. He also testified as to the recovery of the contraband. R.P. Singh, Chemical Examiner, CRCL was examined

as PW6. He also testified that he had checked the facsimile of the seal of DRI (seal of Directorate of Revenue Intelligence 10) and the samples were received with their seals intact. He further testified that the sample packets were kept in the strong room of the CRCL in his presence along with the forwarding letter and the test memo. He also testified as to the analysis report confirming that the samples contained Diacetylmorphine.

13. The prosecution has also established the chain of custody and there is no doubt that the samples were properly taken, sealed and were not tampered with.

14. In the initial stages, it was contended on behalf of the appellant that (i) the prosecution has failed to prove recovery beyond reasonable doubt; (ii) Section 50 of the NDPS Act were not complied with; (iii) the procedure for trial was not fair; (iv) the case property was not safely kept and the possibility of tampering is not ruled out; and (v) that the prosecution had failed to prove that they were authorize to investigate NDPS Cases.

15. However, none of the contentions could be substantiated. Mr Akshay Bhandari, who had initially argued the matter on behalf of the appellant, had confined the challenge to the impugned judgment only on the ground that a fair procedure for trial had not been adopted. He had submitted that in the presence case, pre-charge evidence had not been recorded and the appellant was provided no opportunity to cross-examine the witnesses at the pre-charge stage. Mr Amit Gupta, learned

Amicus Curiae had also advanced arguments with regard to the aforesaid question. However, it is now conceded that the said contention does not survive and the issue is covered by the decision of a Coordinate Bench of this Court in ***Smt. Rajni Goswami v. State : Crl. M.C. 4606/2018 decided on 04.06.2020.***

16. Ms Alka Singh, learned counsel now appearing for the appellant has confined her submissions only on the question of seeking reduction in the sentence awarded. She readily concedes that there are no grounds to challenge the appellant's conviction for committing an offence punishable under Section 21(c) of the NDPS Act. However, she submits that the petitioner is the only male earning member in the family. He was 52 years of age at the material time. And, considering the mitigating circumstances, the sentences awarded to the appellant ought to be reduced. She had also referred to the decision of the Supreme Court in ***Balwinder Singh v Commissioner of Customs and Central Excise: (2005) 4 SCC 146***, where under similar circumstances, the Court had reduced the prison sentence from 14 years to 10 years.

17. Mr Aggarwala, learned counsel appearing for DRI does not dispute that there are several cases where sentences have been reduced. He submits that the same is at the discretion of the Court. He submits that the learned Trial Court had awarded the appellant to twelve years of rigorous imprisonment keeping in view the quantity of Heroin recovered (that is, 17.32 Kgs).

18. This Court is of the view that there are certain mitigating circumstances which are required to be considered. The petitioner was the only male member of his family, which comprises of his widowed mother, his wife a daughter. It is also relevant to note that the appellant is not involved in any other case and has no criminal antecedents.

19. It is also material to note that in *Balwinder Singh (supra)*, 175 Kgs of Heroin and 39 Kgs of Opium of foreign origin was recovered from the petitioner. However, the Court noted that the petitioner “was convicted of this offence for the first time” and considering the facts and circumstances reduced the sentence awarded.

20. The appellant has been in custody since 04.02.2010 and has served more than ten years and six months of his prison sentence. His conduct in jail is also reportedly satisfactory. Considering the above, the sentence awarded to the appellant is reduced from twelve years rigorous imprisonment to the sentence already served. The appellant shall pay the fine of ₹1,00,000/- as imposed and in default of which shall serve simple imprisonment for a further period of three months instead of one year as directed by the impugned order dated 29.03.2016.

21. The petitioner’s appeal against the impugned judgment convicting him of an offence punishable under Section 21(c) of the NDPS Act is dismissed. However, the impugned order of sentence dated 29.03.2016 is modified to the aforesaid extent.

22. Mr Aggarwala, learned standing counsel appearing for respondent states that the case property has been preserved in terms of the impugned judgment passed by learned Trial Court and the same may be permitted to be destroyed and the truck seized may be permitted to be disposed of. Since the appellant's conviction of the offences under the NDPS Act has been upheld, there is no requirement to preserve the case property. The contrabands seized from the appellant may be destroyed and the motor vehicle (truck) may also be disposed of in accordance with law.

23. The appeal is disposed of in the aforesaid terms. All the pending applications are also disposed of.

VIBHU BAKHRU, J

SEPTEMBER 25, 2020
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