

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.742 OF 2013

Ramesh Singh @ Reuben Sungte @ Reuben
Herojit s/o Shyam ChandAppellant
Versus
Union of India and another ...Respondents

Mr. Taraq Sayyed, Advocate a/w. Advait Tamhankara, Ashwini
Achari, Sachin Shete, for the Appellant.

Ms. Manisha Jagtap, Special PP a/w Shubham Gade, for
Respondent No.1-UOI.

Smt. Veera Shinde, APP, for Respondent No.2-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 28th JULY, 2022

ORAL JUDGMENT :

1. This is an appeal challenging the judgment and order dated 26.6.2013 passed by the Special Judge under the Narcotics Drugs and Psychotropic Substances Act, 1985 (NDPS Act), Greater Mumbai passed in NDPS Special Case No.91/2010. The appellant was the sole accused in this case. At the conclusion of the trial, the appellant was convicted and sentenced as below :

- i. He was convicted for the offence punishable under Section 29 read with 21 read with 8(c) of the NDPS Act and was sentenced to suffer RI for 14 years and to pay fine of Rs.1 Lakh and in default of payment of fine to undergo SI for one year.
- ii. He was convicted for the offence punishable under Section 8(c) read with 21(c) of the NDPS Act and was sentenced to suffer RI for 14 years and to pay fine of Rs.1 Lakh and in default of payment of fine to further suffer SI for one year.
- iii. He was convicted for the offence punishable Section 30 of the NPDS Act and was sentenced to suffer RI for 7 years and to pay fine of Rs.50,000/- and in default of payment of fine to further suffer SI for six months.

The appellant was acquitted from the offence punishable under Section 23(c) of the NDPS Act. He was granted set off under Section 428 of Cr.P.C. for the period he had undergone in jail as an under trial prisoner since 8.12.2009. Significantly, the operative part mentions substantive sentences were to run consecutively.

2. Section 29 of the NDPS Act provides punishment for abetment and criminal conspiracy. Section 21 provides punishment for contravention in relation to manufactured drugs and preparations. In the present case it was involving commercial quantity. Section 8(c) prohibits production, manufacture, possession, sell, import, export etc. of any narcotic drug or psychotropic substance. Section 30 refers to preparation to commit an offence punishable under certain sections. Section 23 is about illegal import or export of narcotic drugs and psychotropic substances.

3. The prosecution case is that, on 7.12.2009, the appellant had gone to the office of a courier company, namely, M/s. Aramex India Pvt. Ltd. at Andheri for sending 10 gaskets packed in polythene and paper sheets. The booking clerk was suspicious about the articles. He looked into one of the packets and saw that there was some suspicious substance. He informed his Manager, who in turn informed the NCB officers. It is the prosecution case that the NCB officers came to the office of the courier company and conducted raid. The appellant was found sitting in the office itself.

He was apprehended. His statements were recorded on 8.12.2009 and 12.12.2009. The packets were opened. There was powder of suspected drugs. It was collected together. It weighed 1 Kg. The field kit showed presence of heroin, i.e. a narcotic drug. Samples of 5 grams each were drawn for sending them to Forensic Science Laboratory [FSL]. During personal search of the appellant, an airway bill was found mentioning name of M/s TNT India Pvt. Ltd. which was another courier company having office in Andheri. The NCB officers went to that courier company office as well. Search was conducted there also. Even in that office, similar parcels deposited by the appellant were seized. Those parcels also contained 1 Kg of heroin. Two samples of 5 grams each were drawn and kept in sealed packets for sending them to FSL. One of the samples each from those two offices was sent to CFSL at Hyderabad and the other two samples were sent to FSL at Kalina, Mumbai. The offence was registered. The investigation was carried out. The chemical analysis report confirmed presence of heroin in all the samples. The investigation was completed. Complaint was filed by the investigating officer. Trial was

conducted and the appellant was convicted and sentenced as mentioned earlier. During trial the prosecution examined eight witnesses.

4. The appellant examined himself as the defence witness apart from explaining circumstances against him in the statement recorded under Section 313 of Cr.P.C.

5. The specific defence of the appellant was that he came to Delhi from Manipur in the year 2008. His family consisted of his parents and sister. He got a job of selling clothes in Karol Bagh, Delhi. He met two Nigerians in 2009. Their names were Sam and Richard. They told him that he could work for them in Nigeria as supplier of clothes. He agreed. They took his passport and two photographs for arranging for *visa*. In that connection he was called to Mumbai. He came to Mumbai on 7.12.2009. Out of these two persons, Richard received him and took him to one courier company's office from where he was to send his documents to Nigeria. The appellant waited at the gate. First, Richard went inside. Then the appellant was taken inside. He was introduced as the sender. Richard took the appellant to another courier

company, same events were repeated. He had prepared a forged driving license of the appellant. Within a few minutes, there was some commotion and Richard ran away from the office. The officers from NCB then apprehend the appellant. He was beaten and he was forced to write and sign statements. Thus, in short, his case was that he was framed by two Nigerians Mr. Sam and Mr. Richard.

6. The prosecution case unfolds through the evidence of PW-4 Sanjay Satam. He has deposed that he was working as an Assistant Manager in Aramex India Pvt. Ltd. in MIDC Andheri (East). It was a courier company. On 7.12.2009 at about 2.45 p.m. to 3.00 p.m., the appellant came to his office with 10 cardboard parcels containing automobile parts known as 'gaskets'. He wanted to send these parcels to Netherland. PW-4 got suspicious and looked inside one of the packets through a corner of the packet. He saw white powder in a plastic bag. He got suspicious. He telephonically informed his Manager Harshal Bhoi (examined as PW-7). PW-4 was asked by PW-7 to keep the appellant engaged in conversation so that by that time PW-7 could contact the NCB and

the officers could reach the courier company's office. According to that plan, within 15 to 20 minutes Mr. Prakash Antony from NCB (examined as PW-1) came to his office. He took charge of the situation. He made enquiries with the appellant. The cardboard packets were opened. The samples were drawn. This witness was called to the NCB office on 17th and 18th December, 2009 for recording his statement. At that time, the appellant was present in the office. He was identified by this witness.

In the cross-examination, he has admitted that whenever parcels are brought to the courier company, they look at the address of the sender and the receiver of the parcels. But the articles which the appellant had brought did not bear any address of the sender and the receiver. In further cross-examination he deposed that he had looked in only one of the parcels and he was satisfied about the suspicious nature of other parcels by touching them. He denied the suggestion that a Nigerian had come to his office and had brought these articles. That person had shown identity of an Indian and, therefore, he got suspicious.

7. PW-4's evidence has to be seen in the background of the

evidence of PW-1 Mr. Prakash Antony, who had conducted major part of this investigation. He has deposed that on 7.12.2009 he was in the process of seizing 400 grams of heroin from a parcel deposited by somebody with M/s TNT India Pvt. Ltd.. He was present in that courier company's office between 10.30 am to 2.00 pm. Other NCB officers were present with him. At around 3'O Clock, he received a telephonic information from PW-7 Harshal Bhoi about the suspicion expressed by PW-4 Sanjay. According to this information, PW-1 along with his colleagues went to that office. He telephonically conveyed this information to his Superintendent Mr. Farnandes. He arranged for two independent witnesses, briefed them about the information and all of them entered the office of M/s. Aramex India Pvt. Ltd.. The appellant was sitting on one of the chairs. He was apprehended. He was asked about the consignment which he had brought to the office. He pointed out to the consignment kept at the booking counter. It consisted of ten brown coloured rectangular cardboard packets. The packets were opened. Every packet contained one transparent polythene cover containing gaskets with labes of the manufacturing company. On

removing polythene cover it was found that the articles were covered with thick paper-sheets. They separated the layers of thick paper sheet and found a white transparent polythene cover with off-white coloured powder in it. A small quantity was tested on field testing kit which answered positive for presence of heroin. Then all the packets were opened. The contraband was weighed together. It was found to weigh 1 Kilogram. Two representative samples of 5 grams each were drawn and kept in heat sealed envelopes. They were marked as "S-I" and "S-II". They were signed by panchas, officers and witnesses. Three wax seals of NCB Seal No.3 were put on each envelope of samples. Remaining bulk packet was kept in a carton and was sealed. PW-1 then informed the appellant that his personal search was required to be taken. PW-1 apprised him of the appellant's rights under Section 50 of the NDPS Act. He declined to exercise that right and allowed PW-1 to search. On his personal search various documents in the form of driving license, identity card etc. were found. He also was having a shoulder bag. Packing material of the consignment was found in that shoulder bag. It was also seized. The driving license and

identity card seized from him showed different names. Thus they appeared to be forged documents. One airway bill was recovered from the appellant's possession. It was pertaining to sending one parcel through M/s. TNT. The appellant told the officers that he had sent similar parcel through M/s. TNT on the same day. The details of the airway bill of the parcel were recorded and some of the NCB officers went for further investigation at M/s. TNT India Pvt. Ltd., a courier company. After completing the procedure, PW-1 went to his office and prepared an information note. He submitted it with the original panchnama to his Superintendent Mr. Farnandes. The information note is produced on record at Exhibit-24. The seized samples and the bulk quantity were deposited in their godown after following due procedure. On 8.12.2009 and 12.12.2009, the appellant's statements under Section 67 of the NDPS Act were recorded. Sample was sent to Hyderabad along with covering letter. Sample collected from M/s.TNT courier company was also sent for analysis to Hyderabad CFSL. On 22.12.2009, he received a report from DyCC, Mumbai in respect of presence of heroin. On 12.2.2010, he received CA report from

CFSL, Hyderabad about samples “S-II” and “S-IV” showing presence of heroin. After completion of investigation, he filed the complaint.

In the cross-examination, he was asked about his appointment with NCB. He was originally an Inspector working with CISF i.e. Central Industrial Security Force. He was cross-examined about the telephonic call which he had received on that date about the suspicious parcel. He admitted that the seizure panchnama also did not show that the parcel were having any addresses of the sender or the receiver. He further explained that the appellant himself had identified the said parcel which he had brought for sending and was in the process of booking. This witness then was cross-examined in respect of sealing of the packets as to whether it was heat sealed by using candles or by using a machine. He had deposed that he had used candles for heat sealing. He denied the suggestion that the samples of the bulk packets were not heat sealed by using candles and were actually sealed in the NCB office using a machine. He denied the suggestion that the appellant was falsely implicated just because he had accompanied one Nigerian to M/s. Aramex India Pvt. Ltd.

courier company.

8. PW-5 Vinodkumar Singh acted as a pancha for the raid conducted at M/s. Aramex India Pvt. Ltd.. He himself was working with the said courier company as an Operation Executive. He used to sit on the ground floor. On 7.12.2009 at around 2.00 pm, Harshal Bhoi - his Manager called him to his office and introduced him to the NCB officers. He accompanied the NCB officers inside the office. This witness has thereafter corroborated the evidence of PW-1 in respect of the procedure carried out during the raid. He has deposed about drawing samples etc.. He denied the suggestion that no samples were drawn in his presence. According to him, the NCB officers were present in the office for around 2 to 2 ½ hours. There were four of them. He corroborated the fact that the appellant was sitting on one of the chairs and the parcels were lying on the counter. He agreed that the parcels did not bear names of the accused as a sender and the parcel also did not bear the name of the receiver.

9. PW-7 Harshal Bhoi is another important witness. He was the Country Manager (Operation) working with M/s. Aramex

India Pvt. Ltd.. His cabin was on the mezzanine floor. He has deposed that on 7.12.2009, during lunch time, he received a telephonic call from PW-4 Sanjay Satam expressing suspicion about a parcel which was to be sent. PW-7 then went there and saw one of the parcels. He also saw that there was some suspicious substance. He then instructed PW-4 to keep the person bringing the parcel busy for some time. He then telephoned PW-1 Prakash Antony, who came to the office of the courier company at around 3.15 pm. Then the procedure of raid was conducted. This witness had called PW- 5 Vinodkumar Singh and had introduced him to the officers for acting as a pancha. This witness has further corroborated the evidence of PW-1, PW-4 and PW-5.

In the cross-examination he has explained the procedure for booking the parcel. He has deposed that once the parcel was received and the docket sheet was prepared, the airway bill was given to the sender. They used to obtain signature of the sender in the register. They used to verify the address of the sender and the recipient. If the parcel did not contain names of the sender or the recipient, they used to decide whether to accept it or not.

For sending a parcel to a foreign country, three documents were necessary viz., invoice, Custom declaration and photo ID of the sender. He has deposed that even prior to 7.12.2009 he had interaction with PW-1 Prakash Antony in connection with a similar case and, therefore, he was having his phone number in his list. He deposed that when he went to the place where PW-4 was sitting, PW-4 had already seen one parcel and it was in a torn condition. He thereafter denied the theory that the parcel was brought by one Nigerian.

10. The next leg of investigation was carried out by the officers in respect of M/s. TNT India Pvt. Ltd.. In that connection, the prosecution has examined PW-3 Bhumeshwar Nerati. He was working as a Pickup and Delivery Assistant. He has stated that on 7.12.2009 at about 2.30 pm, the appellant approached their office and gave a parcel to be sent to a foreign country. He was not having any document. This witness asked for invoice and purchase bill or copy of the said parcel. This witness then asked for handwritten declaration. Even that was not available. Then as per the instructions of his superior he opened the box, verified it and

gave that person a blank invoice and got it filled from the appellant. The box contained 10 packets of automobile material having plastic wrappers. They were known as gaskets. Those documents were shown by him to his superior Vinod Shinde. Those were the normal articles which were sent abroad. He prepared airway bill as per the invoice. The packets were to be sent to Netharland. One copy of the airway bill was given to the appellant and the courier charges were collected from him. The appellant left the office at around 2.50 pm. This witness has identified the airway bill which he himself had prepared at that time. The airway bill was produced at Exhibit-17 and the invoice was produced at Exhibit-18. On the same evening, the NCB officers came to his office at around 6.00 pm, showed the airway bill and made enquiries about the same. After that this witness told them about the booking made by the appellant. The box was kept in the store room. It was opened and it was found that there was 1 kilogram powder collected from all the packets together. Two samples of 5 grams each were drawn. Seizure panchnama was prepared. He had visited the NCB office and had given his

statement.

In the cross-examination, he stated that the sender has to personally come to the courier company's office if he wanted to send some articles. In the present case, the appellant had given his mobile number. This witness then made a phone call on that number. The mobile phone of the appellant started ringing and therefore this witness believed his identity. According to this witness, if an article is to be sent to a foreign country then customs clearance is necessary. He further stated in the cross-examination that entry of airway bill was not immediately noted in the computer. According to him, the feeding of the information was usually completed in the evening by a data entry operator. The airway bill (Exhibit-17) was not reflected in the record of his office. The airway bill was prepared in five copies, one of them was given to the sender and four copies were retained by the office which were to be processed by the data entry operator. In this case, four copies of the airway bill were kept in the box which was to be sent abroad. In the seizure panchnama there was no mention of the remaining three copies of the airway bill. He denied the suggestion

that the copies were not available in this case. In normal course the box should have had one copy attached to it and three copies should have been kept along with it.

11. PW-6 Kishor Hate was the Intelligence Officer working with NCB, who had conducted the seizure operation at M/s. TNT India Pvt. Ltd.. He had attended the premises of M/s. Aramex India Pvt. Ltd.. After that raid, the appellant told that another similar parcel was given to M/s. TNT office. It was connected to the airway bill, which was already seized from his personal search at M/s. Aramex India Pvt. Ltd. premises. This witness then informed his Superintendent Mr. Farnandes and then he went to M/s. TNT India Pvt. Ltd.. It was 6.15 pm and they conducted raid after arranging for panchas. They opened the carton. The packets were opened. They were tested. The contents were tested on the field testing kits. It showed positive results for heroin. Two samples of 5 grams each were drawn which were heat sealed and kept in envelopes by marking as "S-III" and "S-IV". The total quantity was 1 kilogram of heroin. He then went back to NCB office at 10.15 pm and handed over the seal to the Superintendent Mr. Farnandes,

prepared the depositions memo and deposited the same with Superintendent Mr.Farnandes by making entries. Samples were sent to Dy.CC.

In the cross-examination, he has stated that M/s. TNT courier company's office is at a distance of ten minutes from M/s. Aramex India Pvt. Ltd. He admitted that when the airway bills were produced before him, they were not attached to the parcel containing ten gaskets. The bills mentioned the address at PMJP building, City Mumbai. He did not carry out any investigation about that address. The parcel was not having name of the sender or name of the receiver. The airway bill Exhibit-17 mentioned the time as '14.50 hours' showing that it was issued at that time. He did not remember whether he had heat sealed the samples by using candles or machines.

12. PW-8 Mr. Farnandes was the Superintendent and he is the superior officer to PW-6 as well as PW-1. He has narrated the events at his end. He had endorsed the note prepared by Prakash Antony (PW-1) and put it before the Zonal Director. Copy of the panchnama of seizure at M/s. Aramex was also produced along

with that. The articles were deposited by PW-1 with this witness under a forwarding memo Exhibit-25 collectively. It was then kept in the godown. He has also deposed about the raid conducted by Mr. Hate. It was informed to him that it was in respect of the office premises of M/s. TNT India Pvt. Ltd.. On 8.12.2009, PW-1 and PW-6 gave him respective search and seizure reports. On 8.12.2009, PW-1 Prakash Antony submitted him a report of arrest of the appellant.

In the cross-examination, nothing much of significance was brought on record.

13. PW-2 Narayan Panigrahi was a carrier who had carried the samples to CFSL, Hyderabad.

14. After the prosecution evidence was over, statement of the appellant was recorded under section 313 of Cr.P.C. and he examined himself as the defence witness. A reference to his defence and his statement is made in the foregoing paragraphs.

15. Learned Judge considered the evidence on record and discussed its evidentiary value in the judgment. He has referred to

the CA reports at Exhibits-63 and 64 showing that the samples drawn at both these premises showed presence of heroin. At the conclusion of his judgment, he convicted and sentenced the appellant as discussed above.

16. Mr. Sayyed, learned counsel for the appellant submitted that the appellant is falsely implicated in this case. There are too many loop holes in the prosecution case. He submitted that it was extremely doubtful as to how PW-4 could have seen the packets without opening them and if they were opened; that means the witnesses had tampered with the packets. It was also quite strange that the packets did not bear the address or any other details of the sender or receiver. There is nothing to connect these parcels with the present appellant.

17. Mr. Sayyed further submitted that the appellant examined himself on oath and has exposed himself for searching cross-examination and there is no reason to disbelieve him. His case is specific. He was brought to that courier company's office by those two Nigerian nationals and they had left him and had ran away since the NCB conducted the raid. There is nothing to show

that the appellant was in conscious possession of the contraband article.

18. Mr. Sayyed further submitted that as far as the raid in M/s. TNT India Pvt. Ltd. office premises is concerned, significantly copies of airway bills were not pasted on the box which was purportedly given by the appellant before going to M/s. Aramex India Pvt. Ltd. The box which he had allegedly deposited with M/s. TNT company cannot be connected to him. The address mentioned on the connected invoice and also the address mentioned on the invoice in respect of another article which was seized in the morning hours from M/s.TNT India Pvt. Ltd. company had almost similar addresses. Admittedly the appellant had reached Mumbai around noon time and he had no role to play in depositing the packet in the early morning and yet the said invoice had a very similar address to the one mentioned in the invoice regarding the box which was allegedly deposited by him at around 2.30 pm in the afternoon.

19. According to Mr. Sayyed, this shows that somebody from the courier company is involved and the appellant is made a

scapegoat. There is no further investigation as to whether the address mentioned was fictitious or was true and as to how a similar address was mentioned in a parcel admittedly not connected with the appellant. He further submitted that it is also not believable to accept that both the investigating officers could not explain as to how the bulk quantity and the samples were heat sealed either by using candles or by machine.

20. Mr. Sayyed further submitted that there is no record of telephonic conversation between PW-7 Harshal Bhoi and PW-1 Prakash Antony. Even there is discrepancy in the narration of events mentioned by PW-4 Sanjay Satam and PW-7 Harshal Bhoi. PW-4 Sanjay Satam has not stated that PW-7 Harshal Bhoi had come to his counter before informing the NCB office.

21. Mr. Sayyed further emphasized that the sentence awarded in this case is too harsh and no reasons whatsoever are given for imposing such harsh punishment and also for making the sentence to run consecutively.

22. Ms. Jagtap, learned Special PP for the NCB submitted that the raids at both places were conducted by following due

procedure and none of the mandatory provisions was violated. The officers visiting both the places had exercised extreme caution and had followed a fair procedure and, therefore, there is no scope to infer that there was any discrepancy which would be advantageous to the defence at any stage.

23. She submitted that very presence of the appellant at the scene i.e. at the premises of M/s. Aramex India Pvt. Ltd. has remained unexplained and the defence raised by the appellant is unbelievable and, therefore, is unacceptable. Learned Special PP submitted that there are hardly any discrepancies in the evidence adduced by the prosecution.

24. I have considered these submissions. As rightly submitted by learned Special PP, the very fact that the appellant was sitting in the office of M/s. Aramex India Pvt. Ltd. needed to be explained clearly by the appellant. He had no other business to come to a courier company except for depositing the parcel. It is not his case that some other parcel was deposited by him.

25. It is not even his case that the parcel which was seized by the NCB officers was not brought to the courier company's office

to his knowledge. His case is that he had accompanied a Nigerian national when this parcel was brought to the courier company's office. He was sitting right there and that Nigerian ran away but the parcel which was seized had to be same parcel which was brought to the office to the knowledge of the present appellant. Therefore, the argument that the parcel did not contain name of the sender or the receiver loses its significance because it is directly connected to the appellant. Throughout the raid the appellant was very much present there and it is not his case that it was tampered before the NCB officers came to the office of M/s. Aramex India Pvt. Ltd.. The booking clerk i.e. PW-4 Sanjay Satam had entertained suspicion about the parcel and he had immediately informed his superior and, therefore, he was still in the process of formally accepting the parcel and, therefore, the details were not prepared. In the meantime, the raid was conducted and, therefore, no inference in favour of the appellant can be drawn in that behalf because of absence of the address on the parcel.

26. As far as the parcel at M/s. TNT India Pvt. Ltd. is concerned, the copy of the airway bill is recovered from the

possession of the appellant. It had led the NCB officers to the other courier company i.e. M/s. TNT India Pvt. Ltd. It was only because of the details mentioned on that airway bill this raid could be conducted and, therefore, even with that raid and with that parcel there is a direct connection of the present appellant. Therefore, the submissions that other copies of airway bills were not pasted on the parcel recovered from M/s. TNT India Pvt. Ltd. has no force. Moreover, PW-3 Bhumeswar Nerati, who was employee of M/s. TNT India Pvt. Ltd. has explained the procedure that the record regarding the parcels was completed only in the evening after the data entry operator entered the details in their system. Therefore, to that extent by the time raid was conducted the procedure was not completed and, therefore, even this aspect about not finding other copies of airway bills on the parcel does not help the defence.

27. As far as drawing of the samples are concerned, the NCB officer, the pancha and the employees of the courier companies have given consistent versions and there is no reason to doubt their depositions. They have sufficiently corroborated each other. There is nothing to infer that the samples were tampered

with.

28. Sufficient evidence is given of depositing the samples after the raid and of sending them to CSFL. There is no suspicious link in that part of investigation. The CA report shows presence of heroin. Hence the offences are made out and the prosecution has successfully proved these offences against the appellant beyond all reasonable doubts. Therefore, as far as the conviction part of the impugned judgment is concerned, in my opinion, the conviction is rightly recorded and it need not be interfered with.

29. However, as far as the sentencing part of the impugned judgment and order is concerned, it requires a serious consideration. This aspect is considered in paragraphs Nos.38, 39 and 40 of the impugned judgment. Learned Judge has observed that the SPP appearing in the case had argued that the accused-appellant was involved in multiple alike cases and, therefore, more than the minimum substantive and pecuniary sentences were required. Learned counsel for the appellant had argued that the appellant was of a young age and that he was the only earning member in his family and, therefore, leniency be shown to him.

The appellant himself was asked about the sentence and he had not stated anything. In this background, the aforementioned sentence was imposed. In my opinion, learned trial Judge has given absolutely no reasons in imposing this sentence and in particular in making the sentences to run consecutively. The effect of his order is that the appellant was sentenced to suffer imprisonment for 35 years and if he was unable to pay the fine, further two and half years were required to be undergone. This, in my opinion, is way too harsh in the facts of this case. Though he is convicted under different heads, learned Judge was empowered to pass order directing the substantive sentences to run concurrently. Without assigning any reasons, he has directed the sentences to run consecutively. Thus, making the sentences too harsh. The appellant has been unable to pay the fine. He is in jail since December, 2009. That means he has suffered actual imprisonment for 12 years, 7 months and 21 days as on today. This is a long period. Therefore, I am inclined to pass an order so that the sentence is reasonable. Considering the long period for which the appellant is in jail, even the substantive sentences awarded can be

reduced to a certain extent. Importantly there is nothing brought on record to show that the appellant is involved in multiple similar cases. Therefore, the reason for awarding such harsh sentence has no basis. Considering the overall circumstances and long period for which the appellant is in jail, following order is passed :

:: O R D E R ::

- i. The appeal is partly allowed.
- ii. The conviction of the appellant under Section 29 read with 21 read with 8(c) of the NDPS Act is maintained. However, the sentence for this offence is altered from 14 years to 12 years. He is also sentenced under this head to pay a fine of Rs.1,00,000/- (Rupees One Lakh Only). In default sentence is also reduced. In default of payment of fine, he is directed to undergo further SI for a period of six months, instead of one year.
- iii. The conviction of the appellant for offence punishable under Section 8(c) read with 21(c) of the NDPS Act is maintained. However, the sentence is altered from 14 years to 12 years. The appellant is sentenced to suffer RI

for 12 years and to pay fine of Rs.1,00,000/- (Rupees One Lakh Only). In default sentence is also reduced. In default of payment of fine, he is directed to undergo further SI for a period of six months, instead of one year.

- iv. The appellant's conviction under Section 30 of the NDPS Act is maintained and his sentence of RI for 7 years is also maintained. He is also sentenced to pay fine of Rs.50,000/-. However, sentence of SI for six months in default of payment of fine is reduced to a period of three months.
- v. All these substantive sentences are directed to run **concurrently**.
- vi. The appellant shall be entitled for set off for the period undergone in jail as an under-trial prisoner under Section 428 of Cr.PC.
- vii. Criminal Appeal is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)