

(2016) 03 DEL CK 0002

In the Delhi High Court

Case No : Criminal A. No. 284 of 2016, Crl. M. (Bail) No. 613 of 2016 and Crl. M.A. No. 4803 of 2016

Anselem Lyke Nwoso

APPELLANT

Vs

Directorate of Revenue Intelligence

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Citation : (2017) 345 ELT 14

Hon'ble Judges : Siddharth Mridul, J.

Bench : Single Bench

Advocate : Shri Atul Guleria and Rahul Tyagi, Advocates, for the Appellant; Ms. Pooja Bhaskar and Shri Satish Aggarwala, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Siddharth Mridul, J. (Oral)—Crl. MA No. 4803/2016 (for condonation of delay in filing the appeal) : Issue notice.

2. Ms. Pooja Bhaskar, learned counsel accepts notice on behalf of the respondent.

3. Since the appellant is in judicial custody, learned counsel for the respondent fairly does not oppose the application for delay in filing the present appeal.

4. The application is allowed. The delay in filing the appeal is condoned.

5. The application is disposed of accordingly.

CRL. A. 284/2016

6. Notice.

7. Ms. Pooja Bhaskar, learned counsel accepts notice on behalf of the respondent.

8. Admit.

9. List the appeal in due course as per its own turn.

10. Trial Court Record be requisitioned so as to be available on or before the next date of hearing.

CRL. M. (BAIL) 613/2016

11. The present is an application under Section 389 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking interim suspension of sentence and grant of bail to the applicant/appellant during the pendency of the appeal.

12. The applicant/appellant is a foreign national, who has been found guilty of possessing 11 kg. of heroin, which admittedly is a commercial quantity. The Trial Court has come to a conclusion that the prosecution has proved its case against the accused for the offence under Section 21(c) of NDPS Act, 1985, beyond reasonable doubt, by way of a judgment and order of conviction and order on sentence dated 19th October, 2015 and 3rd November, 2015 respectively; and sentenced him to ten years of rigorous imprisonment and further sentenced him to pay a fine of Rs. 1 lakh, in default thereof, to undergo simple imprisonment for six months.

13. Learned counsel appearing on behalf of applicant/appellant would urge that the Investigating Officer in the subject FIR did not lift the sample of the contraband at the time of the detention of the appellant, and the sample was lifted later at the DRI office. In this regard learned counsel would further urge that the impugned decision of the Trial Court is contrary to the decision of the Hon"ble Supreme Court in Kuldeep Singh v. State of Punjab reported as 2011 Criminal Law Journal 2672 wherein the Supreme Court opined that the non-collection of samples at the initial stage of seizure vitiates trial.

14. In the present case, however, it is noticed that there is consistent and reliable evidence of the witnesses with regard to the recovery of the contraband from the possession of the accused, which has been duly established as heroin after chemical analysis. It is further observed that there was no delay whatsoever in the collection of the sample of the contraband from the appellant, and since it was becoming dark at the place of interception, the packets that were recovered from the applicant/appellant were taken to the DRI office for further analysis.

15. The mandate of Section 37 of the NDPS Act, 1985, inasmuch as, it relates to the satisfaction of the Court qua "reasonable grounds" for believing that the applicant is not guilty of such offence and that he is unlikely to commit any offence while on bail, cannot be lost sight of either. [Ref : Union of India v. Rattan Mallik @ Habul reported as (2009) 2 SCC 624].

16. The Hon"ble Supreme Court in Union of India v. Kuldeep Singh reported as (2004) 2 SCC 590, in Paragraph 17 of the report, held as follows :-

"17. An offence relating to narcotic drugs or psychotropic substances is more heinous than a culpable homicide because the latter affects only an individual while the former affects and leaves its deleterious impact on the society, besides

shattering the economy of the nation as well. That the legislature intended to make the offences under the Act so serious to be dealt with sternly and with an iron hand is made clear by providing for enhanced penalties, including even death sentence, in certain class of cases, when convicted for the second time."

17. This Court, in a decision rendered on 3rd August, 2015 in Criminal Appeal No. 670/2015 titled as Annastancia Bhule Ndlovu v. Narcotics Control Bureau, in Paragraph 7 of the report, held as follows :-

"7. It is observed that there is a growing trend in developing countries where numerous impressionable youngsters as well as minors are falling prey to drug abuse. Therefore, this Court would be failing in its duty, if offenders such as the appellant, are shown any leniency in the matter of sentence."

18. In terms of the foregoing and in view of the circumstance that applicant/appellant has been sentenced under Section 21(c) of NDPS Act, 1985 as well as keeping in view the mandate of Section 37 of the NDPS Act, 1985, I do not find this is a fit case for grant of suspension of sentence during the pendency of the appeal.

19. The present application is hereby dismissed.