

(2011) 05 DEL CK 0203
In the Delhi High Court
Case No : Criminal Appeal No. 85 of 2005

Mohd. Javed

APPELLANT

Vs

The State of N.C.T. of Delhi

RESPONDENT

Date of Decision : 09-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 29, 67

Citation : (2011) 05 DEL CK 0203

Hon'ble Judges : Ajit Bharihoke, J

Bench : Single Bench

Advocate : Anish Dhingra, for the Appellant; Satish Aggarwala, for the Respondent

Judgement

Ajit Bharihoke, J.—This appeal is directed against the judgment of learned Special Judge, NDPS dated 02nd November, 2004 in SC No. 34/98 and the consequent order on sentence dated 03rd November, 2004 whereby the Appellant Mohd. Javed was convicted for having committed offence u/s 29 read with Section 21 of NDPS Act and sentenced to undergo RI for the period of 15 years and also to pay fine of Rs. 2 lakhs and in default, to undergo SI for the period of one year.

2. Briefly stated, case of the prosecution is that on 06th March, 1998 at about 12.15 a.m. in the night, co-accused persons namely Asif Parvez and Mohd. Akram were apprehended by the DRI officials near Police Check Post, Singhu Border with 10.231 Kgs. of Heroin concealed in the in-built cavities in the door and boot of the Van in which the aforesaid accused persons were travelling. Accused Mohd. Akram when examined u/s 67, NPDS Act categorically stated that he had brought said Heroin to Delhi from Amritsar in the van at the instance of the Appellant Mohd. Javed, a Pakistan national whom he had met at the house of his in-laws at Jama Masjid. On this, search of residential premises of father-in-law of Mohd. Akram was conducted and the passport and boarding cards of

Mohd. Javed were recovered. The passport of Mohd. Javed was shown to the co-accused Mohd. Akram, who identified the photograph on the passport as that of Mohd. Javed on whose direction, he had brought Heroin from Amritsar. It is also the case of prosecution that the Appellant Mohd. Javed in his statement u/s 67, NDPS Act admitted having sent Mohd. Akram to Amritsar for bringing Heroin to Delhi for onward delivery to a person and he also identified the photograph of accused Mohd. Akram.

3. The Appellant was charged for offence punishable u/s 29 read with Section 21 of the NDPS Act. He pleaded not guilty to the charge and claimed trial.

4. In order to bring home the guilt of the Appellant, prosecution examined 18 witnesses. On conclusion of prosecution evidence, incriminating evidence and material was put to the Appellant in his statement u/s 313 Code of Criminal Procedure. The Appellant claimed himself to be innocent.

5. Learned Special Judge, on consideration of evidence, found the Appellant guilty of offence punishable u/s 29 read with Section 21 of NDPS Act and convicted the Appellant. Vide order dated 03rd November, 2004, the Appellant was sentenced to undergo RI for the period of 15 years and also to pay fine of Rs. 2 lakhs, in default, to undergo SI for the period of one year.

6. Learned Sh. Anish Dhingra, Advocate, on instruction of the Appellant, submits that the Appellant does not press his appeal on merits and admits his guilt so far as factual matrix of the case is concerned. Learned Counsel for the Appellant, however, has confined his submissions to the quantum of sentence and prayed for leniency. It is contended that the Appellant deserves leniency for the reason that he realizes his mistake and he undertakes not to indulge in any criminal activity hereafter. Learned Counsel submits that the Appellant has a large family comprising of four daughters and two sons, who are dependants upon him for subsistence. Thus, learned Counsel has pressed for reduction of sentence from 15 years RI awarded to the Appellant to the period already undergone by him. He further submits that the Appellant is a poor man and is not in position to pay Rs. 2 lakhs as fine. Thus, he has also pressed for reduction of the sentence of fine imposed upon him.

7. Learned Sh. Satish Aggarwala, Advocate appearing for the Respondent, on the other hand, has vehemently opposed the request of the Appellant for leniency and reduction in sentence.

8. I have considered the rival contentions and perused the record.

9. On perusal of the nominal roll received under the signatures of Superintendent, Central Jail No. 3, it transpires that out of the 15 years RI awarded to the Appellant, he has already undergone actual incarceration for the period of 12 years, 10 months and 23 days as on 28th April, 2011, which is a substantial portion of the sentence awarded to him. Taking into account the submissions made by the Appellant and the fact that the Appellant appears to be

in a mood of remorse and repentance, I take a lenient view and reduce the sentence awarded to the Appellant u/s 29 read with Section 21 of NDPS Act from 15 years RI to the period already undergone by him in custody and the fine imposed is reduced from Rs. 2 lakhs to Rs. 1 lakh, in default, to undergo SI for the period of one year.

10. Appeal is disposed of in the above terms.

11. Copy of the judgment be sent to the concerned Jail Superintendent for information and necessary action.