
(2006) 05 DEL CK 0201
In the Delhi High Court
Case No : Crl A No. 245 of 2005

Rasheed Mohd.

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-05-2006

Acts Referred:

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

Citation : (2006) 130 DLT 515 : (2006) 90 DRJ 39

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : K.L. Juneja, for the Appellant; Pawan Sharma, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—This is an appeal against the order of conviction of the appellant u/s 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as "the said Act"). Upon conviction, the appellant has been sentenced to 10 years of RI and Rs. 1 lakh fine. The petitioner has, pursuant to the said sentence, already undergone imprisonment for a period in excess of six years two months. The fine has not been paid. However, the default sentence is of simple imprisonment of one year.

2. The appellant was found in possession of 1 k.g. of a substance said to contain diacetylmorphine. The court below had convicted the appellant for possession of the same. It had awarded the minimum sentence of 10 years in respect of a commercial quantity of heroin (diacetylmorphine). The small and commercial quantity specified by virtue of notification No. S.O. 1055 (E), dated 19th October, 2001 are 5 grams and 250 grams of diacetylmorphine respectively. If the recovery is of more than 250 grams of diacetylmorphine, then the same is regarded as a commercial quantity and the accused is liable to be convicted u/s 21(c) of the said Act. However, if the quantity recovered falls between 5 grams and 250 grams, then the accused is liable to be convicted u/s 21(b) of the said Act where the maximum sentence prescribed is 10 years and the maximum fine

prescribed is up to Rs. 1 lakh. The court below convicted the appellant u/s 21(c) of the said Act and awarded the minimum sentence provided therein.

3. The learned Counsel for the appellant has only one submission to make and that is that the recovery effected from the appellant was only of 9.87 grams of heroin based upon the percentage content of diacetylmorphine in the recovered substance of 1 k.g. He based his submission on the ratio of the decision in the case of Ansar Ahmed v. State 123 DLT 563. It is true that in Ansar Ahmed (supra), it was held that the only thing that is to be considered is the actual content of diacetylmorphine in the substance and the weight of the neutral substance is to be ignored. Taking the actual weight of diacetylmorphine into consideration, as per the FSL Report which indicates the content to be 0.97%, the weight of diacetylmorphine comes to only 9.7 grams. This being the case, the quantity recovered is far below the commercial quantity, but above the small quantity specified. Accordingly, the conviction of the appellant has to be upheld, but u/s 21(b) of the said Act. As regards the sentence, I note that the quantity recovered is a little above the small quantity and the appellant has already undergone over six years and two months of imprisonment and, Therefore, I feel that no further imprisonment would be necessary and the sentence already served out is sufficient. As regards the fine also, the default period of one year, even if the same is taken into account, would translate to 5 years of imprisonment for the offences and about one year in default of payment of fine. Therefore, no further fine can be imposed at this stage. Accordingly, the conviction is upheld, but u/s 21(b) of the said Act and the appellant is liable to be released forthwith on account of sentences already undergone.

This appeal stands disposed of dusty.