

**IN THE HIGH COURT OF MADHYA
PRADESH**

**AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL APPEAL No. 7266 of 2024

ANARJI

Versus

THE STATE OF MADHYA PRADESH

Appearance:

Shri Akshay Bhonde, learned counsel for the appellant.

Shri Vinod Thakur, learned Government Advocate for the respondent/
State.

Heard on	:	08.08.2024
Pronounced on	:	09.08.2024

This criminal appeal having been heard and reserved for judgment, coming on for pronouncement this day, the court passed the following :

JUDGMENT

This criminal appeal is preferred under Section 374 of Code of Criminal Procedure, 1973 by the appellant being aggrieved by judgment dated 30.04.2024 passed by the learned Special Judge

(NDPS Act), District Indore (M.P.) in Special Sessions Case No. 146 of 2016 whereby the appellant has been convicted for offence punishable under Section 8 (C) read with Section 20 (b) (ii) (b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (herein after referred to as 'the Act') and sentenced to undergo three years rigorous imprisonment with fine of Rs.10,000/- along with default stipulation.

2. As per the prosecution story, on 03.04.2016 the concerning police has received a secret information regarding contraband article and after that concerning police took action on the information received and they reached on the spot and caught the appellant as well as another co-accused Nasruddin S/o Sabuddin Patel and there is a total recovery of 6 kilogram of ganja from the possession of present appellant and police arrested the appellant and co-accused.

3. The learned trial Court, after considering the evidence and material available on record has convicted the appellant, as stated above in para No.1.

4. The appellant has preferred this criminal appeal on several grounds but during the course of arguments, learned counsel for the appellant did not press this appeal on merit and did not assail the finding of conviction part of the judgment. He confines his arguments on the point of sentence. Counsel for the appellant assures that the appellant will not involve in such criminal activities in future. He also submitted that the appellant has suffered *more than two years and three months* custody period. The appellant is having regard to

all circumstances which resulted in appellant's conviction and further keeping in view the fact that the appellant was facing the trial before the concerned Court for more than eight years, therefore, he prayed that the appeal be partly allowed and the sentence awarded to the appellant be reduced to the period already undergone.

5. In support of his contention, counsel for the appellant has placed reliance over the judgment passed in ***CRA No.7063/2022 (Mukesh Kumar Jatav Vs. The State of Madhya Pradesh)*** decided on **12.05.2023** wherein co-ordinate Bench of this Court has reduced and undergone the sentence of the appellant in only 09 months out of 10 years. Similarly, in this Bench in the case of **Tulsiram vs. State of M.P.** passed in **CRA No.12105/2023** decided on **01.12.2023** wherein this Bench has passed the sentence of six months out of four years of imprisonment by enhancing the fine from Rs.30,000/- to Rs.1,00,000/-. As well as, in the case of **Labhchand vs. State of M.P.** passed in **CRA No.15379/2023** and **Nitesh Vs. the State of Madhya Pradesh**, passed in **CRA No. 15614/2023** which were decided on **16.01.2023** wherein the appeals were partly allowed and the sentence under Section 8(b)/20(a)(i) of the NDPS Act awarded to the appellants were reduced to two years R.I. from 04 years by maintaining the fine of Rs.50,000/-.

6. Learned counsel for the respondent - State of Madhya Pradesh has opposed the prayer. He supported the judgment and order by submitting that there is clear evidence against the appellant, therefore, he prays for dismissal of the appeal.

7. I have considered rival contentions of the parties and perused the record.

8. So far as the contentions on merit of the case raised in appeal memo by learned counsel for the appellant is concerned, the learned trial Court has not committed any error in appreciation of evidence available on record. Further, it is found that the Court below considered the evidence available on record and correctly found that the case of the prosecution is well supported by the witnesses and documentary testimony. The procedure was well followed by the prosecution and the witnesses of prosecution have profoundly supported the prosecution case. The trial Court has well considered the material available on record, hence, no infirmity is found in the impugned order of conviction passed by the trial Court, accordingly, the same is upheld.

9. Insofar as the sentence is concerned, learned counsel for the appellant has alternatively prayed only on the part of sentence and submitted that since the appellant has already suffered *more than two years and three months* of his jail incarceration out of three years rigorous imprisonment, he may be released only with the undergone sentence by enhancing the fine amount.

10. In this regard, earlier also the Hon'ble Apex Court as well as this Court has also considered the prayer and reduced the incarceration period of the accused person to the period already undergone in the cases where the quantity of the contraband is found

to be of non-commercial or less than the commercial quantity.

11. On this aspect, the Hon'ble Apex Court in the case of **R. Kumaravel vs. Inspector of Police NIB CID (CRA No.1056/2019)** decided on **15.07.2019** has observed as under:-

"As per Section 20(b)(ii) (b) of minimum punishment is prescribed for involvement of the quantity lesser than commercial quantity, by greater than the small quantity.

Learned counsel appearing on behalf of the appellant has submitted that the appellant has no criminal antecedents. The appellant has already undergone imprisonment for about 206 days. Considering the facts and circumstances of the case, the sentence of imprisonment of two years imposed upon the appellant is reduced to **one year.**"

12. Further, on this aspect, the case of **Mangilal Vs. Central Narcotics Bureau [2006 Law Suit (MP) 111]** is worth referring here wherein the Court has partly allowed the appeal and as the case was related to 2 kg opium i.e. non-commercial quantity, passed a conviction for 3 years RI with fine of Rs. 1000/- instead of 5 years. Similarly, in the case of **Kamal Vs. State of M.P. 2012 Law Suit (M.P.) 2298 (CRA No.10/2011)**, **Baba @ Akash Sonkar vs. State of M.P., 2020 Law Suit (M.P.) 1645 (CRA No.426/2000)**, **Bhagwat**

Patel Vs. State of M.P., 2022 LawSuit 789 (CRA No.674/2022), Munna @ Munnu Pandit Vs. State of M.P., 2022 Law Suit 789 (CRA No.2494/2022) the co-ordinate Bench have reduced the sentences of the accused persons respectively in non-commercial quantities. In the case of **Kamal (supra)**, the co-ordinate Bench has reduced the punishment to undergone for approximately two years out of five years for a non-commercial quantity, in the case of **Baba @ Akash Sonkar (supra)**, reduced the sentence to one year out of seven years imprisonment, in **Bhagwat Patel (supra)** the Bench has reduced the sentence to the period already undergone in 8 months and similarly in the case of **Munna (supra)** in seven months.

13. In view of the aforesaid, so far as the sentence is considered, it seems that the appellant has suffered approximately *two years and three months* of his jail incarceration out of three years R.I.. That apart. the appellant has suffered the ordeal of criminal case since 2016. There is no minimum sentence prescribed in this regard. On this aspect, the law laid down by the Hon'ble Apex Court, in the case of **R. Kumarawal (supra)** as well as the settled propositions of law endorsed by coordinate bench of this court, has been considered.

14. In view of the aforesaid legal proposition regarding non-commercial quantity so also considering the fact that there is no criminal record / antecedents of the appellant, this Court finds it expedient to partly allow this appeal. However, looking to the facts and circumstances of the case, sentence already undergone would be sufficient by maintaining the fine amount to meet the ends of justice.

15. Accordingly, this Criminal Appeal is partly allowed and the sentence under Section 8 (c) read with Section 20 (b) (ii) (b) of the Act awarded to the appellant is hereby reduced to the period already undergone by enhancing the fine from Rs.10,000/- (Rupees ten thousand only) to Rs.25,000/- (Rupees twenty five thousand only). In case of failure to deposit the fine amount, the appellant shall further undergo for three months simple imprisonment.

16. The appellant is in jail. The bail bond (if any) of the appellant shall be discharged after depositing of the enhanced fine amount. Fine amount, if already deposited, shall be adjusted.

17. The judgment of learned trial Court regarding disposal of the seized property stands affirmed.

18. A copy of this order be sent to the concerned trial Court for necessary compliance.

19. Pending I.As. if any, stands closed.

20. With the aforesaid, the present appeal stands disposed off.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE

Vindesh