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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PREM NARAYAN SINGH**

ON THE 10th OF APRIL, 2024

CRIMINAL APPEAL No. 8385 of 2019

BETWEEN:-

**KESHURAM S/O SUKHLAL DHOBI OCCUPATION:
LABOUR GRMA KHEDI MANASA (MADHYA PRADESH)**

.....APPELLANT

(SHRI VIJAY KUMAR DUBEY, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THR.PS. MANASA (MADHYA PRADESH)**

.....RESPONDENT

(SHRI H.S. RATHORE- GOVT. ADVOCATE)

JUDGMENT

1. Heard.
2. Learned counsel for the appellant prays for withdrawal of IA No.4129/2024, an application for suspension of sentence and grant of bail.
3. Prayer is allowed.
4. Accordingly, the application stands dismissed as withdrawn.
5. This criminal appeal is preferred under section 374 of Cr.P.C. by the appellant being aggrieved by the judgment dated 13.08.2019, passed by learned Special Judge, NDPS Act, Neemuch, in S.S.T.No.04/2010, whereby the appellant has been convicted for the offence punishable under Section 8/18(B) of NDPS Act and sentenced to undergo 10 years RI with fine of Rs.1,00,000/-, in lieu of default in payment of fine amount further two years R.I. has been

awarded.

6. As per prosecution story, on 17.10.2004, the concerning police 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 there was recovery of 9 kg 100 grams of opium from the possession of co-accused Devilal and appellant fled away from the spot. Thereafter, in the year 2012, appellant Keshuram was arrested and charges sheet was filed. Here, it is pertinent to mention that the case against co-accused Devilal has already been decided on 24.11.2009.

7. 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 merits and 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 **09 years 09 months and 17 days** out of 10 years custody period. It is prayed that the sentence in lieu of default of fine amount may be reduced to the period already undergone. To bolster his contentions, counsel for the appellant has placed reliance in the case of ***Shantilal Vs. State of M.P. (2008) CRL. J. Page-386***, whereby under identical circumstances the Apex Court had while considering the tenability and imposition of custodial sentence in default of payment of fine found that the sentence and penalty were distinct and held that the term of imprisonment in default of payment of fine is not a sentence. It is a penalty that a person incurs on account of non-payment of fine and sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole, either in appeal or revision or in other appropriate judicial proceedings or

“otherwise”. A term of imprisonment ordered in default of payment of fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuses to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of fine by paying such amount. Counsel submitted that on account of non-payment of fine the Apex Court had consequentially reduced the sentence in default of payment from two years to six months.

8. However, counsel for the State has opposed the prayer.

9. I have heard the counsel for the parties and perused the record and impugned judgment.

10. Before dwelling upon the punishment, the following excerpt of *Shantilal (supra)* is worth referring here as under:-

"37. For the reasons aforesaid, the appeal is partly allowed, conviction recorded and sentence imposed on the appellant to undergo rigorous imprisonment for ten years is confirmed. An order of payment of fine of rupees one lakh is also upheld. But an order that in default of payment of fine, the appellant shall undergo rigorous imprisonment for three years is reduced to rigorous imprisonment for six months. To that extent, the appeal filed by the appellant is allowed. If the appellant has undergone substantive sentence of rigorous imprisonment for ten years as also rigorous imprisonment for six months as modified by us in default of payment of fine, the appellant shall be set at liberty forthwith unless he is required in any other offence. If the appellant has not completed the said period, he will be released after the period indicated hereinabove is over. The appeal is accordingly disposed of."

11. Further, in the case of *Shahejadkhan Mahebubkhan, Pathan vs.*

State of Gujarat [2013 1 SCC (Cri) 558], the observations regarding the issue involved in the present case is worth referring here as under:-

15. For the reasons stated above, the appeals are partly allowed. The conviction recorded is confirmed and sentence imposed upon the appellants to undergo RI for 15 years is modified to 10 years. The order of payment of fine of Rs.1.5 lakhs each is also upheld but the order that in default of payment of fine, the appellants shall undergo RI for 3 years is reduced to RI for 6 months. Since the appellants have already served nearly 12 years in jail, we are of the view that as per the modified period of sentence in respect of default in payment of fine, there is no need for them to continue in prison. The appellants shall be set at liberty forthwith unless they are required in any other offence. It is further made clear that for any reasons, if the appellants have not completed the modified period of sentence, they will be released after the period indicated hereinabove is over."

12. In view of the aforesaid law laid down by Hon'ble Apex Court, it is revealed that the sentence of penalty was distinct from the main sentence of imprisonment and therefore, even where minimum sentence is prescribed, the sentence in default of penalty may be minimized to any extent.

13. In view of the settled position of law laid down in the case of ***Shantilal and Shahejadhkan Mahebubkhan Pathan (supra)*** his default sentence in lieu of fine amount is reduced to two months RI from two years R.I. by maintaining his conviction, if he does not pay the fine amount of Rs.1,00,000/-.

14. The criminal appeal is disposed of on above terms. The appellant is

directed to be released from jail after completion of actual jail sentence of 10 years R.I. and fine amount of Rs.1,00,000/-, if he is not required in any other criminal case. However, if he fails to deposit the amount in default, he would suffer two months R.I. in lieu of fine amount. Thereafter, he will be released forthwith from jail, if he is not required in any other criminal case.

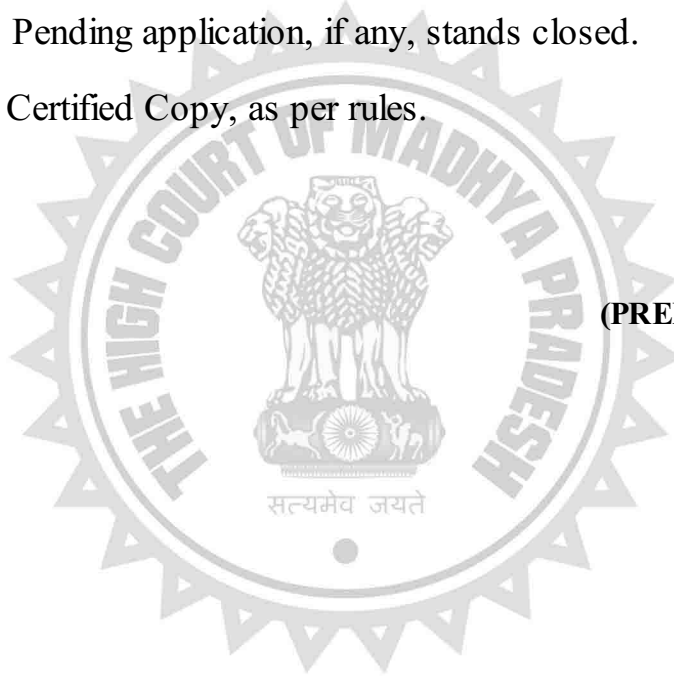
15. The judgement of learned trial Court qua the seized property stands affirmed.

16. Let a copy of this judgment be sent to the concerned trial Court for necessary compliance.

17. Pending application, if any, stands closed.

Certified Copy, as per rules.

Vindesh



(PREM NARAYAN SINGH)
JUDGE