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

**BEFORE**

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

**CRIMINAL APPEAL No. 15715 of 2023**

**BETWEEN:-**

**PREETAMRAM BAJIGAR  
S/O SHRI INDARRAM BAJIGAR,  
AGED ABOUT 36 YEARS,  
OCCUPATION: NIL PATDA (PATRAN)  
DISTRICT PATIYALA PUNJAB THANA  
ARNOCHE (PUNJAB)**

**.....APPELLANT**

***(SHRI JITENDRA SHEJWAR, ADVOCATE )***

**AND**

**THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER  
THROUGH POLICE STATION BHANPURA DISTRICT MANDSAUR  
(MADHYA PRADESH)**

**.....RESPONDENT**

***(SHRI SURENDRA GUPTA - GOVT. ADVOCATE)***

***Heard on: 14.03.2024***

***Pronounced on: 03.04.2024***

***This appeal was heard and the court pronounced the following:***

**JUDGEMENT**

This criminal appeal is preferred under section 374(2) of Cr.P.C. by the appellant being aggrieved by the judgment dated 20.12.2022, passed by Additional Special Judge, NDPS Act, District Mandsaur in S.T. No.11/2018, whereby the appellant has been convicted for the offence punishable under Section 8/15 of Narcotic Drugs and Psychotropic Substances Act, 1985 and sentenced to undergo 09 years RI with fine of Rs.90,000/-, with default stipulation.

2. As per the prosecution story, on 16.09.2018, police Station Bhanpura has received a discreet information and acting upon which, the police reached on the spot

and intercepted a car bearing registration No.HR 09 D 5744, the police after following the due procedure arrested the appellant and on being searched recovered 45kgs of Poppy Husk (*Doda Chura*) from possession of present appellant. After following the due procedure, the police team arrested the appellant and registered the offence accordingly.

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 merits and not assailed the finding part of 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 **approximately 4 years** custody period. He further submitted that he 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 05 years, therefore, he prayed that the appeal be partly allowed and the sentence awarded to the appellant be reduced to the period already undergone by enhancing the fine amount or as the Court may deem fits in the interest of justice. Hence, his sentence 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/-.

6. Learned Govt. Advocate 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 have perused the record.

8. So for as the contentions on merits 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 Court below has well considered the material available on record, hence, no infirmity is found in the impugned order of conviction passed by the Court below, accordingly, the same is upheld.

9. In so far 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 **04 years** of his jail incarceration out of 09 years, he may be released only with the sentence already undergone 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 persons to the period already undergone in the cases where the quantity of the contraband is found to be of non-commercial or lesser 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** reported as **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 MP 1645) (CRA No.426/2000)**, **Bhagwat Patel Vs. State of M.P. (2022 Law Suit MP 789) (CRA No.674/2022)**, **Munna @ Munnu Pandit vs. State of M.P. (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 vs. State (supra)**, the co-ordinate Bench has undergone the punishment in approximately two years out of five years for non-commercial quantity, in the case of **Baba @ Akash Sonkar vs. State (supra)**, sentence has been undergone to one year out of seven years imprisonment, in **Bhagwat Patel vs. State (supra)** the Bench has reduced the sentence to the period already undergone in 8 months and similarly in in the case of **Munna @ Munnu Pandit (supra)** it has been in seven months.

13. In view of the aforesaid, the point of sentence is considered. It seems that the appellant has suffered approximately **04 years** of his incarceration out of 09 years. That apart. the appellant has suffered the ordeal of criminal case since 2021. 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 Co-ordinate bench of this court, has been perused.

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, therefore, this Court finds it expedient to partly allow this appeal to meet the ends of justice.

15. Accordingly, this Criminal Appeal is partly allowed and the sentence under Section 8/15 of the NDPS Act awarded to the appellant is hereby reduced to the period already undergone by enhancing the fine from Rs.90,000/- to Rs.1,00,000/-. 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 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.

**(PREM NARAYAN SINGH)**  
**JUDGE**