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

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

CRIMINAL APPEAL No. 3381 of 2023

BETWEEN:-

**GOPAL SINGH S/O DHULSINGH, AGED ABOUT 55 YEARS,
OCCUPATION: AGRICULTURE R/O VILLAGE MAHUDIYA
TEHSIL BADOD P.S. BADOD DIST. AGAR MALWA
(MADHYA PRADESH)**

.....APPELLANT

(BY SHRI MANOJ SAXENA, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE STATION KOTWALI AGAR
DISTRICT AGAR MALWA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI RAJESH JOSHI, GA FOR THE STATE)

RESERVED ON	:	18.01.2024
PRONOUNCED ON	:	19.01.2024

*This criminal appeal having been heard and reserved for orders,
coming on for pronouncement this day, the Court passed the following:*

JUDGMENT

1. This criminal appeal is preferred under section 374 of Cr.P.C. by the appellant being aggrieved by the judgment dated 04.07.2017, passed by learned Special Judge, NDPS Act, District-Shajapur, in Special Case (NDPS) No.6/2017, whereby the appellant has been convicted for the offence punishable under Section 8(c)/18(c) of NDPS Act and sentenced to undergo 05 years RI with fine of Rs.40,000/- and default stipulation.

2 . A s per the case of prosecution on 07.05.2017, on a discrete

information, the police has recovered one KG and 100Grmas of Opium from possession of the appellant. Thereafter, following the due procedure of law, FIR was registered. Thereafter, investigation was conducted and charge sheet was filed after which the charges were framed against the present appellant but he denied the same and expressed his willingness to face the trial, the present appellant was found guilty for the offences u/s 8(c)/18(c) of the NDPS Act, 1985.

5. 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 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 more than 15 months custody period. He further submitted that he is having regard to all circumstances which resulted in appellant's conviction. Further keeping in view the fact that the appellant was facing the trial before the concerned Court for almost 07 years, therefore, he prayed that the appeal be partly allowed and the sentence awarded to the appellant be reduced to the period already undergone.

6. 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.30000/- to

Rs.100000/-.

7. 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.

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

9. So far as the contentions on merits of the case raised 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.

10. In so far as the sentence is concerned, learned counsel for the appellant has prayed only on the part of sentence and submitted that since the appellant has already suffered more than **15 months** of his jail incarceration, he may be released only with the undergone sentence by enhancing the fine amount.

11. 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.

12. On this aspect, the Hon'ble Apex Court in the case of **R. Kumaravel vs. Inspector of Police NIB CID (RA 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.**"

13. 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 MP 1645 (CRA No.426/2000), Bhagwat Patel Vs. State of M.P. 2022 Law Suit 789 (CRA No.674/2022), Munna @ Munnu Pandit 2022 Law Suit 789 (CRA No.2494/2022)** the co-ordinate Bench have reduced to the sentences of the accused persons respectively in non-commercial quantities. In the case of **Kamal (supra)**, the co-ordinate Bench has undergone punishment in approximately two years out of five years for non-commercial quantity, in the case of **Baba @ Akash Sonkar (supra)**, undergone the sentence in 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.

14. In view of the aforesaid, the point of sentence is considered. It seems that the appellant has suffered more than **15 months** of his incarceration out of 05 years. That part. the appellant has suffered the ordeal of criminal case since 2017. 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.

15. In view of the aforesaid legal proposition regarding non-commercial quantity which is 01KG and 100grams of ganja, 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.

16. Accordingly, this Criminal Appeal is partly allowed and the sentence under Section 8(c)/18(c) of the NDPS Act awarded to the appellant is hereby reduced to the period already undergone by enhancing the fine amount from Rs.40000/- to Rs.50,000/-. In case of failure to deposit the fine amount, the appellant shall further undergo for three months simple imprisonment.

17. The appellant is in jail. After depositing the aforesaid fine amount, he shall be released from the 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.

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

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

(PREM NARAYAN SINGH)
JUDGE

AMIT

