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

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

**ON THE 4<sup>th</sup> OF JANUARY, 2024**

**CRIMINAL APPEAL No. 6372 of 2023**

**BETWEEN:-**

**AMJAD S/O BHURU KHAN PATHAN, AGED ABOUT 43  
YEARS, OCCUPATION: NIL 17, MAHENDRA NAGAR,  
NEAR PETROL PUMP, TAAL ROAD, JAORA, P.S. I.A.  
JAORA, DIST. RATLAM (MADHYA PRADESH)**

**.....APPELLANT**

***(BY SHRI RISHIRAJ TRIVEDI, ADVOCATE )***

**AND**

**THE STATE OF MADHYA PRADESH STATION HOUSE  
OFFICER THROUGH POLICE STATION INDUSTRIAL  
AREA, JAORA, DISTT. RATLAM (MADHYA PRADESH)**

**.....RESPONDENTS**

***(BY SHRI RAJESH JOSHI, GA FOR STATE)***

***Heard on: 07.12.2023***

***Pronounced on:04.01.2024***

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

**JUDGEMENT**

This criminal appeal is preferred under section 374 of Cr.P.C. by the appellant being aggrieved by the judgment dated 12.02.2022, passed by Special Judge, NDPS Act, Jaora District Ratlam in S.T. No.06/2017, whereby the appellant has been convicted for the offence punishable under Section 15(b) r/w Section 25 of NDPS Act and sentenced to undergo 05 years RI with fine of Rs.50,000/-, with default stipulation.

2. As per the prosecution story, on 27.03.2017, police Station Jaora has received a discreet information and acting upon which, the police intercepted a

vehicle Indigo Car bearing registration No.MP-09-HE-5979 coming from Dhodhar to Namli on Highway. After following the due procedure, the police arrested the appellant and recovered 42 KG poppy straw containing in two sacks. After following the due procedure, the police team arrested the applicant and registered the offence accordingly.

3. The appellant was tried and charged under Section 8/15(b), 25 and 29 of NDPS Act. The learned trial Court, after considering the evidence and material available on record has convicted the appellant, as stated above in para No.1 of this order while acquitted the co-accused Nadeem (deceased).

4. The appellant has preferred the present appeal mainly on the ground that judgment and order of the trial Court is contrary to law and facts available on record. The learned trial Court committed error in not considering the material contradictions and omissions appeared in the statements of prosecution witnesses. Learned counsel for the appellant has vehemently contended that the provisions of Section 42 and 50 of the NDPS Act has not been complied with. It is further submitted that the prosecution witnesses of seizure have turned hostile and have not supported the case of prosecution.

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 approximately **one year** 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 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 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.

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 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.

10. 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 one year of his jail incarceration out of five years, 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 the 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 approximately one years of his incarceration out of 05 years. That apart. the appellant has suffered the ordeal of criminal case since 2014. 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 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

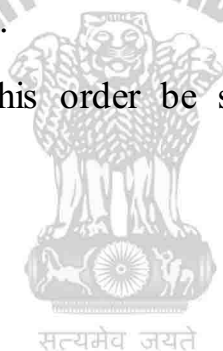
appeal. However, looking to the facts and circumstances of the case, sentence two years of R.I. would be sufficient with enhancement of fine to meet the ends of justice.

16. Accordingly, this Criminal Appeal is partly allowed and the sentence under Section 8/15(b) r/w 29 of the NDPS Act awarded to the appellant is hereby reduced to **Two years R.I. from Five years R.I.** by enhancing the fine from Rs.50000/- to Rs.1,00,000/-. In case of failure to deposit the fine amount, the appellant shall further undergo for three months simple imprisonment.

17. 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