

*NCB Vs Ms. Norest Gwatidzo*

**IN THE COURT OF SH. SUDESH KUMAR II : SPECIAL JUDGE - NDPS  
PATIALA HOUSE COURTS : NEW DELHI**

**Case No. SC/28/2019  
NCB Vs Ms. Norest Gwatidzo**

30.03.2019

Present: Sh. B.S. Arora, Ld. SPP for NCB.

Accused produced from JC.

Ms. Svetlana Khiyungdzuzu, Ld. Counsel for accused.

1. Matter today is fixed for scrutiny of documents/consideration on charge, however, at the very outset, Ld. Counsel for accused Ms. Norest Gwatidzo submits that accused wants to plead guilty for the offences she is charged with.

2. Perusal of the file reveals that this accused Ms. Norest Gwatidzo is facing trial for the offences punishable U/s 9 (A) and 25 (A) of NDPS Act.

3. It is stated by Ld. Defence Counsel for the accused Ms. Norest Gwatidzo that the accused wants to plead guilty and she is prepared to face all the consequences and her statement may be recorded. Court has granted sometime to the accused to reflect upon her decision and she has stated before the court that she wishes to stick by her decision to plead guilty.

4. In view of the same, statement of accused Ms. Norest Gwatidzo has been recorded separately in which she has pleaded guilty. She has also mentioned about the circumstances in which the offences were committed and the mitigating circumstances which the Court may take into consideration while sentencing her. She submits that she has already remained in custody for 4

***NCB Vs Ms. Norest Gwatidzo***

months and 15 days in the present case.

5. As per the case of the prosecution, on the basis of information dated 14.11.2018, accused was intercepted at IGI Airport, Terminal 3 near gate no. 5 and during examination of her baggage, 15 kgs of pseudoephedrine hydrochloride was recovered which was concealed in the trolley bags. It is also the case of the prosecution that the accused was to travel Adis Ababa by European Airlines through Flight No. ET-687.

6. In view of the voluntary plea of guilt of the accused Ms. Norest Gwatidzo, she is convicted for the offences punishable U/s 9 (A) and 25 (A) of NDPS Act.

7. Ld. SPP for NCB Sh. B.S. Arora has contended that appropriate sentence may be imposed on the convict.

8. On the other hand, Ld. Defence Counsel has argued that the convict belongs to the poor strata of the society and she got involved in the present case due to extreme poverty. She is a lady aged about 45 years. Her husband has deserted. She has five minor children to take care of. Her parents have already expired. It is stated that convict is not involved in any other case and the quantity of recovery is relatively smaller. The convict undertakes not to indulge in any illegal activity in future.

9. Medical status report qua convict was sought. As per the report dated 26.03.2019 filed on behalf of Senior Medical Officer, Central Jail No. 16, Mandoli, Delhi-110093 through Deputy Superintendent concerned, it is reported that "*on 23.03.2019, she had complaint of high blood pressure, so antihypertensive was*

**NCB Vs Ms. Norest Gwatidzo**

*started. Her blood pressure was controlled and fall under normal range. She came on 26.03.2019 with complaint of gabrahat, decrease sleep, insomnia since 1 week. For her recent complaints, she will be sent to IHBAS on 28.03.2019 and at present, there is no psychiatrist in Jail. At present, she is otherwise stable.”*

10. I have given careful consideration to the submissions made by the Ld. Counsels. Dealing with the issue of sentencing, the Hon'ble Supreme Court in another case titled and reported as **Karamjeet Singh Vs. State (Delhi Admn.) (2001) 9SCC 161** has made the following observations:

***Punishment in criminal cases is both punitive and reformative. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformative aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal,***

***useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law.***

11. The aforementioned judicial dicta therefore makes it clear that the sole purpose of punishing an offender is not retribution alone and that the courts while sentencing an offender must make an attempt, within the parameters of the law, to afford an opportunity to the offender to reform himself/herself and lead the life of a normal, useful member of society. In the present case, the convict has no previous criminal antecedents and it does appear from the totality of the attendant circumstances and material on record that she is not a hardened criminal. She might have been forced due to her economic condition to indulge in the illegal trafficking of controlled substance. No doubt poverty is not a justification for commission of crimes but in the considered opinion of this court, imposing a harsh sentence will also not subserve the interests of justice. The convict has admitted her guilt stating that due to her financial hardship she agreed to become a carrier. It is also to be borne in mind that the convict has the sole responsibility to take care of her five minor children. She being a foreign national is unnecessarily liability on our jail and she is required to be deported back to her country. Thus taking into consideration the nature of offences (particularly that recovery from her is a controlled substance i.e. '15 kgs of pseudoephedrine hydrochloride') social and economic status of the convict and the reason for which she appears to have committed the offences, this court hereby sentences the convict to

**NCB Vs Ms. Norest Gwatidzo**

undergo rigorous imprisonment for the period already undergone by her and to pay a fine of Rs. 50,000/- and in default thereof to undergo simple imprisonment for a period of one month with direction to immediately deport her to her country following entire procedure and legal provisions in this regard. NCB to take all steps in this regard. Fine not paid. Benefit of Section 428 Cr. PC be given to the convict.

12. In view of the provisions of Section 437 A Cr. PC, convict Ms. Norest Gwatidzo is directed to **furnish bond in a sum of Rs. 20,000/- with one surety of like amount.** Convict seeks some time for depositing fine amount as well as furnishing bond U/s 437 A Cr. PC. As requested, put up for same on 10.04.2019 at 2 PM.

13. Since, she has been convicted by this court, she is required to be deported back to her country. Let copy of the order be also sent to FRRO for making compliance in this respect.

14. On the request of Ld. Defence Counsel jamatalashi articles of the convict be handed over to FRRO.

15. The case property stands confiscated to the NCB and that they will be at liberty to dispose the same as per the prescribed rules after the expiry of period of appeal/revision. Copy of this judgment and sentence be given to the convict.

**Announced in the open Court  
on this 30<sup>th</sup> day of March, 2019**

**(Sudesh Kumar II )  
Special Judge: NDPS  
New Delhi**