

NCB Vs Doris Mwansa

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

**NCB Vs Doris Mwansa
Case No. SC/344/2017**

20.02.2018

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

Accused produced from JC.

Sh. M.F. Philip, Ld. Counsel for accused.

Matter today is fixed for further arguments on charge, however, at the very outset, Ld. Counsel for accused has conceded to the settlement of charge against the accused for the offences punishable U/s 9A/25 A of NDPS Act. Record perused.

1. After hearing the submissions on behalf of both the parties in the considered opinion of this Court, the material on record, there is prima facie sufficient to frame charges against accused for the offences punishable U/s 9A/25 A of NDPS Act. Hence a formal charge has been framed against accused for the abovementioned offences to which she pleaded guilty and do not claim trial.

2. It is stated by Ld. Defence Counsel for the accused that accused has pleaded guilty and she is prepared to face all the consequences. 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.

3. The accused has pleaded guilty in the settlement of charge itself. She has also mentioned about the circumstances in which the offences were committed and

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the mitigating circumstances which the Court may take into consideration while sentencing her. She submits that she has remained in custody for 6 months and 22 days in the present case.

4. As per the case of the NCB, on 29.07.2017 at 0005 hours at T-3, IGI Airport, New Delhi, accused was found in possession of 17 kgs of 'pseudoephedrine'.

5. In view of the voluntary plea of guilt of the accused, she is convicted for offences punishable 9A/25 A of NDPS Act.

6. Ld. SPP for NCB Sh. B.S. Arora has contended that in view of the gravity of the offences appropriate sentence may be imposed on the convict.

7. 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. It is stated that convict is a divorced woman. She is 46 years of age. Her parents have expired. She is HIV+ve. She has five minor children to look after and her youngest child is 3 years old. She is also born HIV+ve. The convict was working as a hair dresser in a Saloon. 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. A medical report qua convict is also received from Medical Officer, Central Jail 6 Dispensary, Tihar, New Delhi through Deputy Superintendent concerned in compliance of previous orders. As per same, during mulaiza examination, she gave past history of SIDS+ve and hypertension on treatment. Routine investigations were done and she is in regular follow up with jail visiting SR Medicine for hypertension and DDUH, ART clinic for SIDS+ve. It is stated that she is on anti-retroviral

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medications. It is also stated that as per jail records, her CD4 count is 183 (cells/micro liter) dated 24.08.2017 and her next visit to DDUH, ART clinic is scheduled on 26.02.2018. She last visited CJ-06 dispensary OPD on 16.02.2018. At present, patient is stable & receiving all prescribed medicines from Central Jail No. 6 Dispensary.

8. 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

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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.

9. 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 the carrier. It is also to be borne in mind that the convict has the sole responsibility to take care of her five minor children and suffering from a serious disease as she is HIV+ve. 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 offence (particularly that recovery from her is a controlled substance i.e. 17

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kgs of 'pseudoephedrine'), social and economic status of the convict and the reason for which she appears to have committed the offence, this court hereby sentences the convict to undergo rigorous imprisonment for a period of 7 months 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. Fine not paid. Benefit of Section 428 Cr. PC be given to the convict.

10. 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.

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

12. The case property stands confiscated to the NCB and they will be at liberty to dispose the same as per the prescribed rules after the expiry of period of appeal/revision. The convict is directed to furnish bail bond U/s 437 A Cr. PC in sum of Rs. 50,000/- with one surety in the like amount. She seeks some time for furnishing bail bond. As requested, put up for same on 27.02.2018 at 2 PM.

13. Copy of this judgment and sentence be given to the convict.

**Announced in the open Court
on this 20th day of February, 2018**

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