

NCB Vs Mohd. Afzal Bhatt

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

**NCB Vs Mohd. Afzal Bhatt
Case No. SC/02/2018**

31.01.2018

Present: Sh. P.C. Aggarwal, Ld. SPP for NCB.

Accused present on bail with Ld. Counsel Sh. Naveen Kumar.

1. PW1 Sh. Vikas Yadav (IO) and PW 2 Sh. Sanjeev Kumar (sepoy) already examined and discharged. However, today, at the outset, accused submits that he wants to plead guilty.
2. Perusal of the file reveals that this accused is facing trial for the offences punishable u/s 20 (b) (ii) (A), 23 and 27 (a) of NDPS Act.
3. It is stated by Ld. Defence Counsel for the accused that the accused wants to plead guilty and he is prepared to face all the consequences and his statement may be recorded. Court has granted sometime to the accused to reflect upon his decision and he has stated before the court that he wishes to stick by his decision to plead guilty.
4. In view of the same, statement of accused has been recorded separately in which he has pleaded guilty. He 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 him. He submits that he has already remained in custody for about 68 days in the present case.

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5. As per the case of the NCB, on 01.11.2017, one parcel booked under airway bill no. 3505767473 which was booked by accused on his ID documents was examined and it was found concealing 50 gms of 'charas' and said parcel was destined to Norway and during investigation, it came on record that he used to consume the said narcotic substance.
6. In view of the voluntary plea of guilt of the accused, he is convicted for the offences punishable u/s 20 (b) (ii) (A), 23 and 27 (a) of NDPS Act.
7. Ld. SPP for NCB Mr. P.C. Aggarwal has contended that in view of the gravity of the offences 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 he got involved in the present case due to extreme poverty. It is stated that parents of convict have expired. He is a married man with two minor children. It is stated that there is nobody in the family to look after them. That the convict is not involved in any other case and the quantity of recovery is smaller. The convict undertakes not to indulge in any illegal activity in future.
9. 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

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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.

10.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 and lead the life of a normal, useful member of society. In the present case, the convict

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has no previous criminal antecedents and it does appear from the totality of the attendant circumstances and material on record that he is not a hardened criminal. He may be forced due to his 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. It is also to be borne in mind that the convict has the sole responsibility to take care of wife and 2 minor children. Thus taking into consideration the nature of offence (particularly that the amount of controlled substance involved is only 50 gms of charas), clean antecedents, social and economic status of the convict and the reason for which he appears to have committed the offences, this court hereby sentences the convict to undergo rigorous imprisonment for a period which has been already undergone by him and to pay a total fine of Rs. 30,000/- (Rs. 10,000/- for each offence) and in default thereof to undergo simple imprisonment for a period of one month.

11. In view of the provisions of Section 437 A Cr. PC, convict is directed to furnish fresh bail bond in a sum of Rs. 40,000/- with one surety of like amount. Convict seeks some time for depositing fine amount as well as furnishing bail bond U/s 437 A Cr. PC. As requested, put up for same on 05.02.2018 at 2 PM.

12. At this stage, Ld. Counsel for convict submits that an application for release of jamatalashi of mobile make I-Phone-6 (silver colour) and Nokia phone (Black colour) with sim card bearing no. 9650486599 & 8178124634 alongwith metal ring, one scooter key and one leather bracelet filed on behalf of convict be released to him. No objection has been raised by Ld. SPP for

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NCB. In view of the no objection raised by NCB, let jamatalashi articles pertaining to convict be released to him after due identification. Application stands disposed of accordingly.

13. 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.

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

**Announced in the open Court
on this 31th day of January, 2018**

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