

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL NO. 1008 of 2010****With****CRIMINAL APPEAL NO. 1069 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE G.R.UDHWANI**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?	NO
5	Whether it is to be circulated to the civil judge ?	NO

VENIBEN W/O VENKARNA SURAIYA BANDU....Appellant(s)**Versus****STATE OF GUJARAT....Opponent(s)/Respondent(s)**

Appearance:

MR PRATIK B BAROT, ADVOCATE for the Appellant(s) No. 1
MR LB DABHI, ADDL. PUBLIC PROSECUTOR for the
Opponent(s)/Respondent(s) No. 1

CORAM: HONOURABLE MR.JUSTICE G.R.UDHWANI**Date : 30/09/2013****ORAL JUDGMENT**

1. Criminal Appeal No.1008 of 2010 has been preferred by convict whereas Criminal Appeal No.1069 of 2010 has been preferred by State for enhancement of the sentence imposed upon the appellant Veniben – original accused No.1 in NDPS Case No.1 of 2008 by the learned Special Judge, Surat after finding her guilty for the offence punishable under Section 20 (b)(ii)(B) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “NDPS Act”). The appellant Veniben was inter-alia sentenced to 7 years R.I. with fine of Rs.1.00 lakh, and in default, six months more.

2. At the outset, learned counsel for the appellant in Criminal Appeal No.1008 of 2010 did not press the appeal on merits. But, on the proportionality of the sentence, the learned counsel invited attention of this Court to the various authorities mentioned hereinbelow to persuade this Court to reduce the sentence having regard to the quantity of contraband ganja recovered from appellant – Veniben.

(1) Fakir Imamsha Davalsha Vs. State of Gujarat [2011 (O) GLHEL-HC 225720.

(2) Ashokkumar Balchand Umlani Vs. State of Gujarat [2008(0) GLHEL-HC 228552.

(3) Ghasita Sahu Vs. State of Madhya Pradesh [(2008) 3 SCC 52.

(4) Surendrasinh Gemalsinh Jadav Vs. State of Gujarat [2009(2) GCD 1470 (Guj)].

2.1 He also urged the mitigating circumstances like appellant being a lady, a first time offender with no antecedent, having three issues, youngest among them being unmarried daughter, aged 20 years and would submit that the case requires reduction of sentence.

3. The learned APP, on the other hand, argued that considering the quantity recovered, the trial court in fact has imposed a lenient sentence, and considering the unamended provisions of law which was applicable when the appellant was arrested i.e. on 13th November, 2007, the minimum sentence could not have been less than 10 years. Pressing for enhancement in Criminal Appeal No.1069 of 2010, the learned APP would argue that, considering the trafficking in narcotic drugs and psychotropic substances as a serious menace to the society, the sentence is required to be enhanced as prayed for in the appeal.

4. Having considered the rival contentions as also the case law, this Court proceeds to assign the following reason for its judgment.

(1) In **Fakir Imamsha Davalsha (supra)**, for possession of 9 kgs and 140 gms of contraband ganja, a sentence of R.I. of five years with a fine of Rs.5,000/- was deemed adequate.

(2) In **Ashokkumar Balchand Umlani (supra)**, for possession of 13 kg and 840 gms of ganja, a sentence of 4 years R.I. with fine of Rs.10,000/-, and default sentence of 6 months was deemed appropriate.

(3) In **Ghasita Sahu (supra)**, the Hon'ble Supreme Court deemed a sentence of under five years for possession of 17.750 kg ganja in the circumstances mentioned in para 8 of the judgment wherein the facts that the appellant therein being a middle aged man, with poor background, weighed with the Hon'ble Supreme Court for reduction of the sentence.

(4) In **Surendrasinh Gemalsinh Jadav (supra)**, for possession of 7 kg of ganja, a sentence deemed appropriate was 5 years R.I. and fine.

5. Thus, the consistent approach of the Courts have been to co-relate the sentence to the quantity recovered. Therefore, the notification prescribing small and commercial quantity can always be looked into, in the matter of imposition of sentence. Undisputedly, 12 kg and 364 gms of ganja is a quantity lesser than commercial, and therefore, such possession was punishable with R.I. extending to 10 years with or without fine. In the instant case, R.I. of 7 years has been imposed.

6. As noticed hereinabove, almost similar quantity i.e. 13 kg and 840 gms fetched a R.I. of 4 years and fine of Rs.10,000/-, and a default sentence of six months R.I. in **Ashok Kumar (supra)**. Further, considering the fact that the appellant is a middle aged woman, having three issues, the youngest of which is unmarried daughter aged 20 years, and antecedent being absent, and also considering the scheme of Amended Act as above, it is appropriate to reduce the sentence to 5 years and 4 months R.I. and a default sentence of six months in case of non payment of fine of Rs.1.00 lakh.

7. In above view of the matter, the sentence stands modified by partly allowing Criminal Appeal No.1008 of 2010. If the appellant has already served out a sentence of 5 years and 4 months and has paid the fine, she shall be forthwith set at liberty, unless required in any other case. It is stated that the appellant has already served out 5 years and 10 months of sentence. If that is so, the appellant is not required to pay the fine as the default sentence shall be deemed to have been served out by her. In that eventuality appellant-Veniben shall be forthwith set at liberty if not required in any other case. The impugned sentence stands modified to the above extent. There shall be no order as to costs.

In view of the above discussion, the Court is unable to find any merit in Criminal appeal No.1069 of 2010 for enhancement. The same is dismissed with no order as to costs.

(G.R.UDHWANI, J.)

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