

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO(S).1895 OF 2008
(Arising out of S.L.P.(Crl.)No(s)3404 of 2008)**

MD. MASUK ALI @ KULU

..... Appellant

VERSUS

STATE OF ASSAM

..... Respondents

ORDER

Leave granted.

Delay condoned.

The appellant was convicted under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') and sentenced to 10 years rigorous imprisonment and fine of Rs.1 lac, in default to suffer further rigorous imprisonment for 5 years.

According to the prosecution, the appellant was found with 3 bags containing in total 125 gms. of brown sugar. Two of the bags contained 50 gms., whereas the third bag contained 25 gms. of the contraband. The conviction and sentence of the learned Special Judge was affirmed by the High Court, against which judgment the appellant has filed the present appeal.

..2/-

Mr. Harpreet Singh Sandhu, learned Advocate who has appeared in the matter as Amicus Curiae, submitted that the appellant had already undergone the substantive sentence of 10 years, and since he was unable to pay the fine, he is still undergoing imprisonment for the default period for about one year.

The only submission that he has advanced is that since the appellant has already undergone the substantive sentence, this Court may consider reducing the default period to the period already undergone.

The prayer made by Mr. Sandhu has been opposed on behalf of the respondent, State of Assam, on the ground that since the provisions of the aforesaid Act were meant to be stringent, no leniency should be shown to the appellant in the matter.

Having considered the submissions made on behalf of the respective parties, and since the appellant has been convicted under the provisions of Section 21(1)(b), which relates to being found in possession of brown sugar (heroin) of less than the commercial quantity, which according to the Table (in the Notification dated 16.7.96) is 250 gms, and having regard to the fact that the appellant has been awarded the maximum sentence under Section 21(1)(b), we are of the view that the sentence with regard to the default may be

..3/-

.3.

reduced in the facts and circumstances of the case. The appellant was admittedly found in possession of 125 gms. of the contraband, which is half the commercial quantity prescribed under the Table.

In that view of the matter, we allow the appeal and reduce the default period of sentence to the period already undergone.

The appeal is, accordingly, allowed.

Let the appellant be released forthwith.

**.....J.
[ALTAMAS KABIR]**

**.....J.
[MARKANDEY KATJU]**

**NEW DELHI
November 28, 2008.**

