

SUPREME COURT OF INDIA

Sanjay

Vs.

State of M.P

Crl.A.No.164 of 2007

(S.B. Sinha and Lokeshwar Singh Panta JJ.)

30.04.2008

ORDER

1. Appellants were convicted for commission of an offence purported to be under Section 8 read with Section 21 of the *Narcotic Drugs and Psychotropic Substances Act, 1985* (NDPS Act, for short), having been found in possession of 12 gms. of the contraband from each of them. Our attention has been drawn to Section 21(a) and (b) of the NDPS Act which read as under:

“21. Whoever, in contravention of any provision this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable, - (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to six months, or with fine which may extend to ten thousand rupees, or with both; (b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees.” Indisputably, the appellants are in custody since 28.2.2000 i.e. for a period of more than eight years. Having regard to the facts and circumstances of this case, we are of the opinion that they did not deserve maximum punishment prescribed under Section 21(b) of the NDPS Act, applying the doctrine of proportionality in imposing the sentence vis-a-vis the object and purport thereof as has been provided for in the NDPS Act. We are, therefore, of the opinion that interest of justice would be subserved if the sentence imposed upon the appellants is reduced to the period already undergone by them, including for the default clause. The appellants are in jail. They are directed to be set at liberty forthwith.”

2. The appeals are allowed accordingly