

BEFORE THE HON'BLE SPECIAL JUDGE (NDPS)
(3rd ADDITIONAL SESSIONS JUDGE)

Dist. : Jamnagar

SPECIAL NDPS CASE No. : 10/2022

Exh. :- 160

Complainant	THE STATE OF GUJARAT	
Versus		
Convict / Accused No.1	1	SHABBIRBHAI IQBALBHAI BASAR AGE : 25 YEARS, OCCUPATION : BUSINESS R/o:- Vagher Vado, Machhi Market, Jamnagar.

APPEARANCE :-

Ld. P.P. for the State	<i>Mr. J. K. Bhanderi</i> <i>Mr. D. A. Jivrajani</i>
Ld. Advocate for Convict /Accused No. 1	<i>Mr. M. I. Kureshi</i>

-:: SENTENCE ORDER ::-

- (1). This Court has convicted the Accused No. 1 – Shabbir Iqbal Basar, in Special NDPS Case No. 10/2022, for offence punishable under Section 22(c), for violation of Section 8(c) of The Narcotic Drugs and Psychotropic Substances Act, 1985, in view of Section 258(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S.) [i.e. Section 235(2) of Criminal Procedure Code, 1973]. I have heard the Ld. Advocate Mr. M. I. Kureshi for the Convict / Accused No. 1 and Ld. P. P. Mr. J. K. Bhanderi for the State, at great length.

(2). In view of the decision in the case of ¹**RAM DEO CHAUHAN Vs. STATE OF ASSAM**, the legal position regarding necessity to afford opportunity for hearing the accused persons on the question of sentence, under Section 258(2) of Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S.) (Section-235(2) of CrPC), may be summarized as under:

If the Session Judge does not propose to impose death penalty, there is **no necessity to hear the accused for awarding minimum sentence.**

- In all other cases, the accused must be given sufficient opportunity of hearing on the question of sentence.
- The normal rule is that after pronouncing the verdict of guilty, the hearing should be made on the same day and sentence shall also be pronounced on the same day.
- In cases where the Judge feels or if the accused demands more time for hearing on the question of sentence, the provision of Sec. 309(2) of Cr.P.C. is not a bar for affording such time. In such a situation, the person convicted is required to be sent to jail till final decision."

(3). In the case of ²**DWIJENDRA SHIRISHBHAI MANEK Vs. STATE OF GUJARAT**, the Hon'ble High Court has held that the object behind Sec 235(2) of Cr.P.C. is to see that when accused is convicted, just punishment is inflicted. It is not merely a formality, but it is a

¹ ***RAM DEO CHAUHAN Vs. STATE OF ASSAM : AIR 2001 SC 2231***

² ***DWIJENDRA SHIRISHBHAI MANEK Vs. STATE OF GUJARAT : 2006(1) GLR 676***

procedure, which is required to be followed scrupulously. The Judge must make genuine efforts to elicit from the accused all information such as age, family background, antecedent, financial position etc. and then considering all the factors to inflict the sentence."

- (4). As held by the Hon'ble Supreme Court in the case of ³**SURENDRAPAL SHIVBALAK PAL Vs. STATE OF GUJARAT**, hearing of convicted accused on the point of sentence through his advocate is legally permissible.
- (5). In the case of ⁴**SWAMY SHADDANANDA @ MURLI MANOHAR MISHRA Vs. STATE OF KARNATAKA**, the Hon'ble Supreme Court with regard to opportunity and inquiry, has held that there is a clear and discernible necessity of caution to set the maximum punishment in an offence. And also by implication, there must be intensive and exhaustive inquiry into accused related parameters before employing the maximum sentence by a Court of law.

³ ***SURENDRAPAL SHIVBALAK PAL Vs. STATE OF GUJARAT : 2005(2) GLR 1708***

⁴ ***SWAMY SHADDANANDA @ MURLI MANOHAR MISHRA Vs. STATE OF KARNATAKA : AIR 2007 SC 2531***

Therefore, discretion to the judiciary in this respect (to declare the maximum punishment) is of utmost critical and seminal value. Reasons must be detailed setting clearly why any punishment other than the maximum punishment will not suffice. This is a general and age old rule of sentencing, which has been statutorily recognized under Section 354(3) of Code of Criminal Procedure, 1973.

- (6). The Ld. A.P.P. has vehemently argued that serious offence against public is committed and now-a-day increasing much more in society. The Ld. A.P.P. for the State has vehemently argued that maximum punishment available in law be imposed and heavy fine be imposed.
- (7). The Ld. Advocate for the Accused / Convict, has vehemently argued that the Accused is of young aged and he has no record of past similar offence, retired parents and 3 children are alive, having their responsibility. Looking the age of Accused and responsibility of their family, it is requested to kindly impose minimum punishment which could be awarded considering facts of present case and to do

mercy on them. If maximum punishment is imposed, then it will ruin his life.

(8). The Ld. A.P.P. for the State and Ld. Advocate for the Accused / Convict, have argued the matter on issue of sentence at very great length. I have taken into consideration the arguments of Ld. Advocate for both the parties and facts of the case. I have also heard the Accused / Convict on the point of sentence, in compliance to provision made under Section 235(2) of Cr.P.C.

(9). The Ld. Advocate for the defense, while making submissions, on the point of sentence, has drawn the attention of this Court to the following mitigating circumstances:

- Age of the accused.
- The alleged incident was occurred, because of the influence of extreme mental and emotional disturbance.
- Family background and poor economic condition.
- The delay in completion of trial.
- The probability that the accused can be reformed and rehabilitated.

(10). Now, let us travel through the relevant provisions of Section 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985, to see the provision of it's punishment :

Section 22(c) :

Punishment for contravention in relation to psychotropic substances :

Whoever, in contravention of any provision of 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 psychotropic substance shall be punishable -

(a) *****

(b) *****

(c) where the contravention involves **commercial quantity**, with **rigorous imprisonment** for a term which **shall not be less than ten years** but which may **extend to twenty years**, and shall also be liable to fine which **shall not be less than one lakh rupees** but which may **extend to two lakh rupees**:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

(11). It is held in case of ⁵**ADU RAM VS.MUKNA** that the criminal law adheres in general to the

⁵ **ADU RAM VS.MUKNA : AIR 2004 SC 5064**

principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in such case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet, in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such

a radial departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

- (12). It is held in case of ⁶**STATE OF KARNATAKA Vs. RAJU** that the law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the Courts are required to mold the sentencing system to meet the challenges. The contagion of

⁶ *STATE OF KARNATAKA Vs. RAJU : AIR 2007 SC 3225*

lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner stone of the edifice of 'order' should meet the challenges confronting the society. Friedman in his 'Law in Changing Society' stated that, "State of criminal law continues to be - as it should be – a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with merely where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

(13). It is held in case of ⁷SHIVAJI @ DADTA SHANKAR ALHAT Vs. STATE OF MAHARASHTRA that protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft-modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

(14). Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public

⁷ SHIVAJI @ DADTA SHANKAR ALHAT Vs. STATE OF MAHARASHTRA : AIR 2009 SC 56

confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every Court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

- (15). Imposition of sentence without considering its effect on the social order in many cases may be in reality be a futile exercise. The social impact of the crime, i.e., where it relates to offences against women, drugs, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter-productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

(16). The plea that in a case based on circumstantial evidence maximum punishment should not be awarded is without any logic. If the circumstantial evidence is found to be of unimpeachable character in establishing the guilt of the accused, that forms the foundation for conviction. That has nothing to do with the question of sentence. The mitigating circumstances and the aggravating circumstances have to be balanced. In the balance sheet of such circumstances, the fact that the case rests on circumstantial evidence has no role to play. If the said evidence has been found to be credible, cogent and trustworthy for the purpose of recording conviction, to treat that evidence as a mitigating circumstance, would amount to consideration of an irrelevant aspect.

(17). It is held in case of ⁸STATE OF M.P. Vs. KASHIRAM that the Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim

⁸ *STATE OF M.P. Vs. KASHIRAM : AIR 2009 SC 1642*

belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal."

(18). It is held in case of ⁹**STATE OF GUJARAT Vs. SURENDRAPAL SHIVABALAKPAL** that reformatory theory talks about re-educating and re-moulding a criminal. But according to Salmond, there are in the men who are incurably bad and have an ineradicable instinct. For them, only the principle of deterrence will work. Salmond further says that ideal justice would be a compromise between the principles of reformation and deterrence and in its compromise, it is the principle of deterrence which will hold a predominant influence.

(19). It is held in case of ¹⁰**JASHUBHA BHARATSINH GOHIL Vs. STATE OF GUJARAT** that the object should be to protect

⁹ *STATE OF GUJARAT Vs. SURENDRAPAL SHIVABALAKPAL : 2004(3) GLR 2468*
¹⁰ *JASHUBHA BHARATSINH GOHIL Vs. STATE OF GUJARAT : 1994 (4) SCC 353*

the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Even though the principles were indicated in the background of death sentence and life sentence, the **logic applies to all cases where appropriate sentence is the issue.**

- (20). It is held in the case of ¹¹**RAJIV Vs. STATE OF RAJASTHAN** that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime

11 **RAJIV Vs. STATE OF RAJASTHAN : 1996 (2) SCC 175**

has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'.

- (21). A judge when administering justice, is as much influenced by tides and currents of human emotions and passions as other human beings, but yet he is enjoined by the law to restrain and control them. But at the same time, in deciding the punishment, he is not expected to act ostrich-like and to close his eyes to deliberate disregard and defiance of the law. Judicial detachment is a virtue, but not judicial passivity. Sentence must bring home to the guilty person consciousness that the offence committed by him was against his own interest, as also against the interest of the society of which he happens to be a member. It is the duty of the Court in every case to award a proper sentence having regard to the nature of offence, the manner in which it was committed and to all attended circumstances. The measure of punishment should be proportionate to the gravity of the offence.

(22). As held by the Hon'ble Supreme Court in the case of ¹²D. R. BHAGARE Vs. STATE OF MAHARASHTRA, when the sole reason of the crime being committed is victim's belonged to different religion, no lenient sentence can be imposed.

(23). The Ld. Advocate for the Accused / Convict has prayed to grant benefit of probation to convicted Accused. Section 360 of Cr.P.C. applies to only to first offender, who are entitled to the indulgence on the score of their age, character or antecedents and to the circumstances, in which the offence is committed. The object of this Section 360 of Cr.P.C. is to avoid sending the first offender to prison for an offence, which is not of a serious character and thereby running the risk of turning him into a regular Criminal.

First offenders fall into two classes:

- (1). Those above the age of 21 years and convicted for an offence punishable with fine only or imprisonment for a term of 7 years or less, and;
- (2). Those under the age of 21 years or women and convicted for an offence not punishable with death or imprisonment for life.

(24). It is the date upon which the Court dealt with

¹² *D. R. BHAGARE Vs. STATE OF MAHARASHTRA : AIR 1973 SC 476*

the offender which is crucial date for reckoning the age of the accused. Even where the conditions set out in Section 360(1) of Cr.P.C. are fulfilled, the person convicted cannot, as of right claim the benefit of the provisions of this Section. Section 360 of Cr.P.C. casts duty upon the Court to give benefit of this provision wherever possible to do so and to record special reasons, if it does not do so. The provisions of this Section is in applicable in a State where the Probation of Offenders Act, 1958, has been brought into force.

- (25). So far as State of Gujarat, the Probation of Offenders Act, 1958, is made applicable wherein also the provisions with regard to age, nature of offence etc. are almost similar. In the present case, admittedly the age of the accused person(s) are not of young age and looking the seriousness of offence, the Accused are not entitled to get benefit of provisions of the Probation of Offenders Act, 1958.
- (26). The present Accused No. 1 has committed the offence punishable under Section 22(c) of Narcotic Drugs and Psychotropic Substances

Act, 1985. Considering the object and purpose of the sentence, facts and circumstances of the matter, it does not fall under case of imposing maximum sentence and therefore, it is not fit case to impose maximum sentence, but it will meet the end of justice if sentence of appropriate imprisonment & fine is imposed. The very object of punishment is deterrent and judicial discipline requires that punishment should be not too harsh or not too lenient, but commensurate to the facts and circumstances.

- (27). Considering facts and circumstances of case on hand, arguments of Ld. Advocates for parties, the provisions of punishment made for the offence punishable under Section 22(c) of Narcotic Drugs and Psychotropic Substances Act, 1985 and the dictum laid down by the Hon'ble Apex Court and various Hon'ble High Courts of India in various decisions, this Court is of the view that it will be just, proper, reasonable, legal, justify and lawful, if Accused is ordered to undergo with sentence and with fine, as stated in final operative order.

- (28). Section 428 of Cr.P.C. provides for “Set-off” of

the period of detention undergone during investigation, inquiry or trial, against the sentence awarded by the Court on conviction. This period of detention therefore, becomes part of sentence itself. The period of Pre-detention conviction may be set-off, if such period was with regard to the same case and not in a different case as observed in ¹³ATUL MANUBHAI PAREKH Vs. CBI, pre-trial detention can be set-off against the sentence of imprisonment awarded to the accused, but Section 428 of Cr.P.C. does not apply to a case where imprisonment is ordered in default of payment of penalty.

(29). This Court places on record its appreciation for **admirable co-operation** extended by the Ld. A.P.P. Mr. D. A. Jivrajani for State and the Ld. Advocate Mr. M. I. Kureshi, for the convict-Accused No. 1 as well as Ld. Advocate Mr. A. H. Sama for acquitted Accused No. 3.

(30). Looking the facts of the case and aggravating circumstances, this Court is of the firm view that the present case falls within the category of

¹³ *ATUL MANUBHAI PAREKH Vs. CBI : 2010 (2) GLR 905 (SC)*

imposing sentence of appropriate imprisonment. Considering the facts of the case and all the surrounding circumstances, to meet with end of justice, I pass the following FINAL ORDER of sentence :

-: FINAL ORDER :-

- **The Convict / Accused No. 1 – Shabbir Iqbal Basar, invoking the power of Court under Section 28 of the Code of Criminal Procedure, 1973, is hereby sentenced to RIGOROUS IMPRISONMENT FOR 10 (TEN) YEARS, for the offence punishable under Section Section 22(c) of The Narcotic Drugs and Psychotropic Substances Act,**

1985 and with fine of
Rs.1,00,000/- (Rupees One
Lac only) and in default to pay
fine, the convict / Accused No.
1 shall further undergo the
simple imprisonment for a
term of one Year.

- The above named convicted
accused person shall be
entitled to get benefit of set-
off, of the period of his
detention as an Under-Trial
Prisoner, during the
investigation and trial, against
sentenced imprisonment, as
provided in Section 468 of
Bharatiya Nagarik Suraksha

Sanhita, 2023 (B.N.S.S.) [i.e. Section 428 of Criminal Procedure Code, 1973].

➤ **The copy of the Judgment as well as Order of Sentence shall immediately be given to each Accused No. 1 / Convict, free of cost, as per the provision of Section 404 of Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S.) [i.e. Sub-Section 1 of Section 363 of Criminal Procedure Code, 1973].**

➤ **Jail Warrant of sentence alongwith copy of this sentence order, for execution**

**of sentence, shall be sent to
the Superintendent / Jailor,
District Jail, at Jamnagar, for
it's execution.**

Signed, pronounced and declared in Open Court on this 1st day of May, 2026, at Jamnagar.

Date : 01/05/2026

Place : Jamnagar

(Rasikkumar V. Mandani)

Special Judge (NDPS)

3rd Additional Sessions Judge

Jamnagar. (Code : GJ00715)

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