

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****CRIMINAL APPEAL NO. 1377 of 2007****With****CRIMINAL APPEAL NO. 1485 of 2007****TO****CRIMINAL APPEAL NO. 1486 of 2007****With****CRIMINAL MISC.APPLICATION NO. 3578 of 2014****In****CRIMINAL APPEAL NO. 1377 of 2007****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE G.R.UDHWANI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 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 ?
 - 5 Whether it is to be circulated to the civil judge ?
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SHREE DILIP GAMBHIRLALJI BHAMBHI & ORSAppellants

Versus

STATE OF GUJARAT....Respondent

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Appearance:

CRIMINAL APPEAL NO.1377 & 1486 OF 2007

MR BAGHEL for the Appellants.



MR L B DABHI ADDL PUBLIC PROSECUTOR for the Respondent-1

CRIMINAL APPEAL NO.1485 OF 2007

MR PRATIK B BAROT for the Appellant.

MR L B DABHI ADDL PUBLIC PROSECUTOR for the Respondent-1

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CORAM: **HONOURABLE MR.JUSTICE G.R.UDHWANI**

Date : 10/04/2014

ORAL JUDGMENT

All these appeals arise out of Special NDPS Case No.1 of 2005 sentencing each of the appellants under Sections 8(c), 22(c) and 29(1) of the Narcotics Drugs and Psychotropic Substances Act (for short the Act) inter alia to rigorous imprisonment of 10 years by impugned judgment and order rendered by the learned Additional Sessions Judge & Presiding Officer, 1st Fast Track Court, Valsad on 28/09/2007 for possession of contraband brown sugar weighing 10 Kilogram and 20 Grams which is more than commercial quantity and minimum punishment prescribed is 10 years.

Since the original accused No.3-Dilip Gambhirlalji Bhambhi appellant of Criminal Appeal No.1377 of 2007 is absconding, appeal in respect of the said accused No.3 is not taken up for hearing in absence of the instruction by him to the learned Counsel Mr.Bhaghel who states that appeal of the said appellant be separated and the formal appeal memo for accused-Dilip will be filed by him. Accordingly, appeal of accused-Dilip is separated.



Criminal Misc. Application No.3578 of 2014 is filed seeking suspension of the sentence. Since the appeals are being heard, no orders are necessary on the said application. Accordingly, disposed of.

However, the learned Counsel for the appellants did not address this Court on conviction. Only argument based upon **Shri Chandrasingh @ Bharat Maansingh Waghela Vs. State of Gujarat [2011 (3) GCD 1932]** is that contraband was not established as pure brown sugar; inasmuch as the FSL Report refers it as 'crude brown sugar' and that in the aforementioned case in the similar situation the Division Bench of this Court scaled down the punishment one step lower than what would have been for possession of the commercial quantity as provided in schedule to the Act.

Having perused the FSL Report, it cannot be disputed that purity test of the contraband was not carried out and report in relation to crude morphine was submitted by the FSL. In **Shri Chandrasingh @ Bharat Maansingh Waghela (supra)** also in the similar situation, the punishment came to be reduced on the consideration that no purity test of heroin was undertaken. Thus, in the instant case also, this Court would have similar approach.

Except, org. accused No.3, appellants are already in jail from 19/07/2004. Thus, have already undergone more than 09 years of the sentence. The



interest of justice would be met, if the sentence already undergone is confirmed as a punishment in the facts and circumstances discussed herein above. Accordingly ordered.

In the result, **Criminal Appeal No.1377 of 2007** in respect of original **accused No.4-Mubarak Rajaqmahmmadni Lagar; Criminal Appeal No.1485 of 2007** and **Criminal Appeal No.1486 of 2007** are partly allowed. The judgment and order of conviction rendered by the learned Additional Sessions Judge & Presiding Officer, 1st Fast Track Court, Valsad in Special NDPS Case No.1 of 2005 on 28/09/2007 in respect of **Mubarak Rajaqmahmmadni Lagar-original accused No.4-appellant of Criminal Appeal No.1377, Devnarayan @ Mukesh Ramprasad Harijan Gehlot-original accused No.2-appellant of Criminal Appeal No.1485 of 2007** and **Chandrashekar Dulesingh Rajavat-original accused No.1-appellant of Criminal Appeal No.1486 of 2007** is confirmed. The sentence imposed on the above-named accused-appellants, which shall include the default sentence as well is modified to the one already undergone and above-named accused-appellants shall be released forthwith, if not required in any other case.

(G.R.UDHWANI, J.)

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