

**THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**

**Crl.A.M.P.No.68 of 2015 in Crl.A.No.3 of 2015**

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**Crl.A.No.3 of 2015**

**JUDGMENT:**

This Criminal Appeal is preferred questioning the judgment dt.11-11-2014 in Narcotic Drugs and Psychotropic Substances (NDPS) Sessions Case No.34 of 2015 of the Special Sessions Judge for trial of NDPS Cases (I Additional Sessions Judge, Warangal) convicting the appellant-accused of offences under Section 8 (c) r/w 20 (b) (ii) (A) of the NDPS Act and sentencing the appellant to undergo rigorous imprisonment for one year, to pay fine of Rs.10,000/- and in default to suffer simple imprisonment for one month.

2. It is the contention of the learned counsel for the appellant that the appellant was arrested on 30-10-2013 and was not released on bail and he continues to be in jail even as on date; the sentence of imprisonment imposed on him by the Court below is only for one year; since the appellant has served more than that time and since the Court below had not granted set off of the period of detention undergone by the accused pending trial against the sentence of imprisonment, the appellant is entitled to be released. He fairly stated that it is not necessary to go into the merits of the appeal having regard to the above fact.

3. The appellant also filed Crl.M.P.No.68 of 2015 under Section 428 Cr.P.C. to grant set off of the sentence in S.C.No.34 of 2014 for the period of detention already undergone by him pending trial.

4. The learned Public Prosecutor stated that there is a right of the accused to have the set off for the period of sentence undergone by the accused against the sentence of imprisonment and the application of the appellant may therefore be favourably considered.

5. Having regard to the above submissions, since it is not in dispute that the appellant has been in custody from 30-10-2013 till the date of conviction on 11-11-2014, and continues to be in jail even as on date, and the period of his detention is in excess of the one year rigorous imprisonment sentence imposed on him in the impugned judgment, and having regard to the mandatory language of Section 424 Cr.P.C., I am of the opinion that the accused is entitled to be set free from Warangal Central Prison.

6. Therefore although Criminal Appeal No.3 of 2015 is infructuous on the ground that the accused has served the sentence imposed by the Court below, Crl.M.P.No.68 of 2015 deserves to be allowed.

7. In the result, Criminal Appeal is disposed of

and Crl.M.P.No.68 of 2015 is allowed as prayed for.

8. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

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**JUSTICE M.S.RAMACHANDRA RAO**

Date: 11.02.2015

Note:

Issue C.C. today.

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