

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRA No.S-1073-SB of 2004
Date of decision: 15.07.2015**

Karnail Singh @ Kala

..... Appellant

Versus

The State of Punjab

...Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

1. Whether Reporters of the local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Divjyot Singh Sandhu, Advocate for the appellant.

Ms. Rimplejeet Kaur, Assistant Advocate General for
respondent-State of Punjab.

DARSHAN SINGH, J.

The present appeal has been preferred against the judgment of conviction dated 13.05.2004, passed by learned Judge, Special Court, Kapurthala, vide which appellant Karnail Singh alias Kala was held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (here-in-after called the 'Act') and the order of sentence of even dated, vide which he was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.25,000/- and in default of payment of fine,

he was ordered to undergo rigorous imprisonment for a period of three months.

2- As per the prosecution allegations, on 12.10.1999 the police party headed by Assistant Sub Inspector Parminder Singh was going towards village Khera Dona, Karahal Kalan, Pajian etc. in connection with patrolling. When they reached near the turning of Katcha passage of village Daulatpur, the present accused was seen coming carrying a plastic bag containing something heavy on his right shoulder and on seeing the police party, he tried to turn. He was apprehended in that process. The search was conducted as per law and the appellant was found in possession of 11 kilograms and 250 grams poppy husk in the plastic bag. The samples were separated and the contraband was taken into possession. The Investigating Officer sent Ruqqa Ex.PD to the Police Station. On the basis of which, the formal FIR Ex.PD/1 was registered. The Investigating Officer also prepared the rough site plan Ex.PE of the place of occurrence. The accused was arrested. On return to the police station, the case property was deposited with the MHC. On the next day, the case property along with accused was produced before the Court and the Magistrate checked the case property. Sample parcel was sent to the Forensic Science Laboratory for examination and the Chemical Examiner sent his report Ex.PH. On completion of the formalities of the investigation, the report under Section 173 Cr.P.C. was presented in the Court.

3- The accused-appellant was charge-sheeted for the offence

punishable under Section 15 of the Act vide order dated 20.01.2000, to which the appellant pleaded not guilty and claimed trial.

4- In order to substantiate its case, the prosecution examined as many as five witnesses.

5- When examined under Section 313 Cr.P.C., the appellant pleaded that he is innocent. The present case was falsely implicated upon him. Nothing was recovered from him. At the time of alleged recovery his one leg was fractured and he was bed ridden and unable to walk.

6- In his defence evidence the appellant examined as many as three witnesses.

7- On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned trial Court held guilty and convicted the appellant for the offence punishable under Section 15 of the Act and he was ordered to undergo the sentence as mentioned in the upper part of the judgment.

8- I have heard Mr. Divjyot Singh Sandhu, Advocate, learned counsel for the appellant, Ms. Rimplejeet Kaur, learned Assistant Advocate General for the State of Punjab and have meticulously examined the record of the case.

9- Initiating the arguments, learned counsel for the appellant contended that he does not challenge the conviction. He only wants to pursue the present appeal on the quantum of sentence. Learned counsel for the appellant pleaded that the appellant has already undergone 07 months and 09 days in jail out of the sentence of two years. He has

already deposited the fine imposed by the learned trial Court. He also pleaded that the appellant is a poor person and extremely old person. He has no criminal record and was not involved in any other criminal case. He has also faced the protracted trial.

10- On the other hand learned State counsel pleaded that the sentence awarded to the appellant is just and appropriate. He is not entitled for any leniency in the matter of sentence.

11- I have duly considered the aforesaid contentions.

12- As per the prosecution allegations, 11 kilograms and 250 grams poppy husk has been recovered from the possession of the appellant. PW-1 ASI Parminder Singh, the Investigating Officer of the case and PW2 HC Santokh Singh, the witness of the recovery have fully supported the prosecution version. They have consistently deposed about the recovery of 11 kilograms and 250 grams poppy husk from the possession of the accused. Their statements are fully corroborated from the statements of PW-4 Baldev Singh DSP, Vigilance Patiala, who has supervised the search and seizure of the contraband from the possession of the appellant. Thus, the conviction of the appellant, as recorded by learned trial Court, is well founded.

13- However, I find substance in the contentions raised by learned counsel for the appellant for reduction of the sentence. As per the custody certificate brought on record, the appellant is not involved in any other criminal case. The age of the appellant has been mentioned as 73 years in the impugned judgment dated 13.05.2004 passed by learned trial

Court. More than 11 years have passed since the date of the judgment passed by learned trial Court. In this manner, now the age of the appellant comes to more than 84 years. So, the appellant is an extremely old man. The recovery in this case has been effected on 12.10.1999. So, the appellant is facing the agony of this litigation for the last about 16 years. The custody certificate further shows that he has already undergone sentence of 07 months and 09 days out of the sentence of 02 years awarded to him. The appellant has already paid the fine of Rs.25,000/- imposed by the learned trial Court.

14- Thus, keeping in view the quantity of the contraband recovered from the appellant, his antecedents, extremely old age and the protracted trial faced by him, he certainly deserves the lenient view in the matter of sentence. The appellant has already undergone the actual sentence of 07 months and 09 days, which will suffice the ends of justice.

15- Thus, keeping in view my aforesaid discussion, the appeal against the conviction stand dismissed. However, the order on the quantum of sentence is hereby modified and the appellant is sentence to the imprisonment already undergone by him.

Dated: 15.07.2015.

sunil yadav

**(DARSHAN SINGH)
JUDGE**