

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRA-S-240-SB of 2004

Date of decision : January 21, 2015

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Jugraj Singh

.....Appellant

Versus

State of Punjab

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Kulbhushan Soi, Advocate for the appellant.

Mr. D.S Virk, AAG, Punjab.

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1. *Whether Reporters of Local Newspapers 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?*

RITU BAHRI, J

This criminal appeal has been filed against the judgment dated 19.1.2004 passed by the Special Judge, Ferozepur, whereby the present appellant-accused, Jugraj Singh was convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the NDPS Act') and sentenced to undergo rigorous imprisonment for a period of 3 years and was further ordered to pay a fine of Rs. 1000/-. In default of payment of fine, the appellant was further directed to undergo rigorous imprisonment for a period of 6 months.

As per the prosecution story, on 9.5.1999, ASI Jarnail

Singh, Incharge Police Post Sito Guno along with other police officials was going on a private jeep from village Bishanpura to village Bajidpur Bhoma via Katcha Rasta in connection with patrol duty and when police party had just crossed bridge Suya (canal minor) in the area of village Bajidpur Bhoma, then accused Jugraj Singh was seen coming from the opposite side, who on seeing the police party became perplexed and turned towards the fields on his right side and on suspicion, ASI Jarnail Singh, IO apprehended the accused with the help of other police officials and accused told his name and address on the enquiry of the Investigating Officer. Thereafter, IO told the accused that he suspects some intoxicating material in the jhola (cloth bag) which the accused was carrying in his right hand and he has a right under the NDPS Act to be searched in the presence of some Magistrate or Gazetted Officer, on which accused opted to be searched in the presence of some senior Officer and a non-consent memo Ex. P1 was prepared. Thereafter, IO gave a wireless message to Police Station Sadar Abohar requesting for sending some Gazetted Officer at the spot, as some intoxicating material is suspected in the jhola (cloth bag) being carried by the accused. After about one hour, DSP Abohar, Gurmeet Singh Randhawa came to the spot on his official Gypsy. He also introduced himself as DSP Gazetted Officer of the police Department and asked the accused whether he wants to be searched before him or in the presence of some Magistrate, on which accused reposed confidence in DSP and tendered no objection if the search is conducted in his

presence. Thereafter consent memo Ex. P2 was prepared. Investigating Officer took search of the jhola (cloth bag) as per direction of DSP and recovered opium wrapped in a glazed paper. After arranging weighing material, Investigating Officer separated 10 grams of opium as sample and its parcel was prepared and remaining opium was weighed and found to be 990 grams and its separate parcel was prepared. Thereafter, Investigating Officer sealed both the parcels with his seal bearing initial 'JS' and also prepare sample seal Ex.P3 separately. DSP also sealed both the parcels with his seal bearing initial 'GS'; and attested the sample seal. Case property was taken into police possession. In this background, FIR was registered.

The trial Court after going through the entire evidence led by the prosecution, convicted and sentenced the appellant-accused in the aforesaid terms.

Learned counsel for the appellant, at the outset does not challenge the conviction of the appellant on merits and restricts his prayer to the quantum of sentence.

Having examined the impugned judgment, no illegality, much less irregularity has been found therein warranting interference by this Court. Accordingly, it is upheld. However, a lenient view can be taken on the quantum of sentence of the appellant.

The appellant has undergone 6 months and 12 days in custody out of 3 years. He is not facing criminal trial in any other case. He was released on bail on 17.3.2004 in this case. As per the

case of the prosecution, the recovery in the present case is of 1 Kg opium. As per entry 92 of the Schedule of the NDPS Act (Notification specifying Small quantity and commercial quantity), quantity of 2.5 Kg is commercial in nature. Since the recovery from the petitioner is of non-commercial quantity and he has faced a criminal trial right from the year 1999 and has not misused the concession of bail, his prayer for reduction of sentence is being accepted by this Court.

Keeping in view the fact that the petitioner has faced a criminal trial for almost 16 years, the sentence of the imprisonment awarded to the petitioner is reduced to the period already undergone. However, the fine shall be deposited by him within a period of two months from today, failing which the appeal shall stand dismissed.

With the above modification, the appeal stands disposed of.

January 21, 2015
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(**RITU BAHRI**)
JUDGE