

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

Criminal Appeal S-1287-SB of 2005

Date of Decision: August 19, 2015

Piara Ram

.....Appellant

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. Rahul Vats, Advocate
for the appellant.

Mr. Dhruv Dayal, Deputy A.G., Haryana.

T.P.S.MANN, J. (Oral)

The appellant was tried for committing an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985, for being found in possession of 30 kgs of poppy husk. Vide judgment and order dated 15/19.7.2005, the Additional Sessions Judge, Fatehabad, convicted the appellant for the aforementioned offence and sentenced him to undergo simple imprisonment for a period of two years and to pay a fine of Rs. 15,000/- and in default of payment of fine, to further undergo simple imprisonment for a

period of six months.

In nutshell, the prosecution case is that on 4.5.2003, ASI Balwant Singh, alongwith his fellow officials, was going from City Fatehabad to village Bhodia Khera for patrolling. On the way, he came across Niranjn Singh-Sarpanch, who was associated with the party. While they were talking to each other, the appellant was seen coming from the side of village Bhodia Khera with a gunny bag on his head. On seeing the police party, the appellant removed the bag from his head and sat on the ground on the pretext of passing urine. This arose suspicion in the mind of ASI Balwant Singh, who after enquiring from the appellant his identity, served a notice under Section 50 of the Act. Pursuant thereto, the search of the bag led to recovery of 30 kgs of poppy husk. Two samples of 100 grams each were separated from the bulk. Case property and the samples were taken into possession. Ruqa was prepared and sent to Police Station City, Fatehabad and on its basis FIR No. 215 dated 4.5.2003 under Section 15 of the Act was registered against the appellant.

At the trial of the case, the prosecution examined five witnesses in support of its case. The plea of the appellant was of denial and false implication. However, he did not lead any evidence in his defence.

Having heard learned counsel for the parties and on going through the record of the case, this Court finds that the prosecution has remained successful in establishing the guilt of the appellant. The objection of the defence regarding non-compliance of the provisions of Section 50 of the Act pales into insignificance as the recovery was not effected from the person of the appellant but from the bag which he was carrying on his head and on seeing the police party had removed it and placed it on the ground.

The prosecution had tried to seek independent corroboration to its case by associating Niranjana Singh-Sarpanch, but as said Niranjana Singh was won over by the appellant, he was, accordingly, given up. From the report of the Forensic Science Laboratory, it is apparent that the sample contained meconic acid, morphine, codeine, thebaine, papaverine, narcotine and thus, the same was identified as poppy husk.

In view of the above, no ground is made out for any interference in the conviction of the appellant, as recorded by the trial Court.

Coming to the quantum of sentence, it may be noticed that the appellant was taken into custody on 4.5.2003 and was granted the concession of bail during the trial of the case vide order dated 22.8.2003 passed by the trial Court. On 20.5.2005,

the appellant absented himself from the Court and, accordingly, his bail was cancelled. However, in the later part of the day, the appellant surrendered and applied for bail but the same was declined. Thereafter, the appellant remained in custody for the remaining period of the trial of the case. Subsequent to his conviction and sentence by the trial Court, the appellant was granted the concession of bail by this Court on 1.9.2005 but his bail bonds were accepted only on 27.9.2005. Thus, in all, the appellant has already undergone a period of about eight months. When the appellant was examined by the trial Court under Section 235 Cr.P.C., he had pleaded that he was a poor person and his old parents and younger brother were dependent upon him. The appellant is facing the agony of criminal prosecution for the last more than twelve years. He is not shown to be involved in any other criminal case. Out of the sentence of two years imposed upon him, he has already undergone a period of about eight months.

Taking into consideration the totality of the circumstances, this Court is of the considered view that the appellant need not be sent behind the bars, once again, to serve the remaining sentence of imprisonment imposed upon him. Ends of justice would be suitably met by reducing the sentence of imprisonment of the appellant to the period already undergone by

him.

Resultantly, the conviction of the appellant under Section 15 of the N.D.P.S. Act is upheld. His substantive sentence of imprisonment is reduced to the period already undergone by him. The sentence of fine along with its default clause is maintained.

The appeal is, accordingly, disposed of.

August 19, 2015
amit rana

(T.P.S. MANN)
JUDGE