

**IN THE HIGH COURT FOR THE STATES OF PUNJAB &
HARYANA AT CHANDIGARH.**

CRA-S-706-SB-2004 (O&M)

Date of decision: 5.8.2015

Roshan Lal

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Ms. Amandeep Kaur, Advocate for

Mr. J.B.S. Gill, Advocate for the appellant.

Mr. P.K. Jangra, Addl. Advocate General, Haryana.

Rajan Gupta, J.

This is an appeal against the judgment of conviction dated 16.2.2004 and order of sentence dated 17.2.2004, delivered by Special Court, Karnal. The trial court after recording the prosecution evidence, came to the conclusion that the accused/appellant was guilty of possession of contraband (i.e. 22 Kgs. of poppy husk). The accused was convicted under Section 15 (b) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to be as "NDPS Act") and sentenced to undergo RI for one year and to pay a fine of Rs.2500/-.

Feeling aggrieved against the judgment of the trial court, the appellant has approached this court through the instant appeal.

Learned counsel for the appellant states that he is limiting his prayer only to the extent of reduction in the sentence awarded and does not assail the judgment of conviction. Learned counsel has

submitted that the appellant is a poor person and the only bread winner of his family and has already faced agony of protracted trial. He has further submitted that the appellant is first offender and is not involved in any other case. According to him, in the present case the quantity of contraband (poppy husk) recovered from the possession of the appellant is much below the commercial quantity. Learned counsel, therefore, prays that keeping in view the fact that the appellant has to support his family and the quantity of contraband recovered from him is much below the commercial quantity, the sentence be reduced to the period already undergone by him.

Learned State counsel submits that in case conviction of the appellant is maintained, the court may reduce the sentence as deemed appropriate in the circumstances of the case.

I have heard learned counsel for both the parties.

Briefly, the prosecution case runs thus:

On 25.12.2001, ASI Azad Singh of Police Station Kunjpura alongwith other police officials was present in between Yamuna *Ghat* in the area of village Nasirpur. In the meantime, accused was seen coming from the side of Yamuna having a *Katta* on his left shoulder. He was stopped and apprehended by the police. At the same time, Gian Singh, an independent person also came there and he was also joined in the investigation. Having suspicion of narcotic substance, ASI Azad Singh served notice Ex.PA under section 50 of the NDPS Act upon accused giving him an option for his search in the presence of gazetted officer or

Magistrate. The accused reposed confidence in ASI Azad Singh. On search of the bag, it was found containing poppy husk. Two samples of 250 grams each were separated and remaining poppy husk was weighed which came to be 21 Kgs. 500 grams. Same was put in that very bag. Parcels of the same were prepared and were sealed with impression "AS" and same were taken into possession vide memo Ex.PB. After completion of investigation and on receipt of report of chemical examiner, the accused was sent up for trial.

Finding a prima facie case under Section 15 of the NDPS Act, charge sheet was framed against the accused/appellant to which he pleaded not guilty and claimed trial.

To substantiate its case against the accused/appellant the prosecution examined as many as six witnesses.

The statement of accused under Section 313 Cr.P.C. was recorded, wherein the incriminating evidence available on record was put to him. He refuted the incriminating circumstances and pleaded false implication. He did not examine any witness in his defence.

On the basis of the evidence on record, the learned trial court held the appellant guilty of the charge framed against him and sentenced him as already indicated above.

On a perusal of the impugned judgment as well as trial court record, I am of the considered view that the trial court has rightly appreciated the evidence on record while holding the appellant guilty of the charge framed against him. There is no infirmity or illegality in the

findings given by the court below. The conviction of the appellant is, thus, affirmed.

Even counsel for the appellant, during the course of arguments, has not assailed the judgment of conviction. He has, however, pleaded for reduction in the quantum of sentence on the ground that the appellant is the only bread winner of his family.

Keeping in view facts and circumstances of the case, as also the fact that the appellant has to maintain his family, I deem it fit to reduce his substantive sentence to a period six months. However, the fine imposed by the trial court shall remain intact. Ordered accordingly.

Except with the modification in the quantum of sentence, as indicated hereinabove, the appeal stands dismissed.

August 05, 2015
'Rajpal'

(RAJAN GUPTA)
JUDGE