

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

CRA-S No.576-SB of 2005

Date of decision: 8th July, 2015

Jarnail Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Present: Mr. Manoj Kumar, Advocate
for the appellant.

Mr. J.S. Brar, Asstt. Advocate General, Punjab.

FATEH DEEP SINGH, J.

Appellant Jarnail Singh was found guilty under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'the Act') for being in illegal possession of 250 grams of Opium.

It is through impugned judgment dated 17.08.2004 learned Special Judge, Fatehgarh Sahib convicted and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of ₹1,000 and in default of payment of fine to further undergo rigorous imprisonment for one month. The same has been challenged in this appeal.

At the very onset of his submissions, learned counsel for the appellant Mr. Manoj Kumar, Advocate has made statement that he does not intend to challenge the very merits of the case of the appellant and has only to make a humble prayer that since the total custody period including remissions of the appellant comes to 2 years and 2 months and has undergone actual sentence of 1 year, 2 months and 12 days and the sentence be ordered to be undergone in view of the special circumstances and which prayer is sought to be opposed with much force on behalf of the State by Mr. J.S. Brar, Assistant Advocate General, Punjab contending that since the appellant has been found guilty under the Narcotic Drugs and Psychotropic Substances Act, he does not deserves any leniency.

Heard Mr. Manoj Kumar, Advocate for the appellant and Mr.J.S. Brar, Assistant Advocate General, Punjab on behalf of the State.

It was on 01.05.2002 police party headed by ASI Sukhdarshan Singh apprehended the appellant on the minor bridge in the area of village Ladpur around 4.46 p.m. when the convict was found coming on foot and on seeing the police party he tried to take a sudden turn. The police after obtaining consent Ex.P1 conducted personal search of the accused and contraband wrapped in glazed paper was recovered from the right side pocket of the trousers worn by the accused.

The prosecution through its material witnesses PW1 ASI Sukhdarshan Singh and PW4 ASI Santokh Singh have proved the factum of the recovery from conscious possession of the accused/appellant and therefore, in terms of Section 54 of the Act, a presumption needs to be drawn against the accused who is supposed to satisfactorily account for this possession and which he has failed to do so.

The quantity of 250 grams of Opium admittedly falls within the non-commercial limit.

Keeping in view the special circumstances that have been contended on behalf of the appellant by Mr. Manoj Kumar, Advocate that the appellant has undergone the rigor of trial for two years and thereafter, after his conviction is facing ignominy for 11 years and he has grown-up children of marriageable age and it is clearly conceded by the learned State counsel that the appellant has not been sentenced in any other case under the Act and thus, having regard to all these circumstances together with the fact that during this period appellant must have suffered in terms of his mental strain, distress and his entire life must have been thrown into jeopardy besides having adverse repercussions on the family and its well-being. Thus, to prevent the appellant and to have a path of rectitude, his case needs to be considered sympathetically.

In view of these circumstances and the fact that the total custody including remissions as per the custody certificate is 2 years 2

months and in the light of this substantial incarceration it would subserve the ends of justice if the sentence of imprisonment of the appellant is reduced to the period already undergone by him.

The appeal stands disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

July 8, 2015

rps