

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

Crl. Appeal S-633-SB of 2005

Date of Decision: September 24, 2015

Bagga Singh

.....Appellant

Versus

The State of Punjab

..... Respondent

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

Present : Mr. H.S.Rakhra, Advocate
for the appellant.

Mr. Vikram Bishnoi, Asstt. A.G., Punjab.

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

Convict-Bagga Singh has filed the present appeal for challenging the judgment and order dated 29.3.2005 passed by the learned Judge, Special Court, Bathinda, whereby, he stands convicted under Section 18 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the Act'), for being found in unlawful possession of 525 grams of opium and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,500/- and in default of payment of fine, to further undergo rigorous imprisonment for fifteen days.

As per the prosecution, on 4.2.2003 at about 6:30 p.m., the appellant alighted from a bus coming from Dabwali,

which halted at Bus Stand of Village Jassi Bag Wali and on seeing the police party present there, he became perplexed and threw material wrapped in a glazed paper and, thereafter, he started running away. This gave rise to suspicion in the mind of ASI Gurdas Singh, who was heading the police party standing nearby that the material discarded by the appellant might be containing contraband. Accordingly, the appellant was apprehended and ASI Gurdas Singh picked up the glazed paper and found that it contained opium. 25 grams, out of the same, was taken as sample and put into a container. The residue when weighed came to be 500 grams. Ruqa was, thereafter, sent by ASI Gurdas Singh to Police Station Sangat, on the basis of which, FIR No.25 dated 4.2.2003 was registered against the appellant at the said police station under Section 18 of the Act.

When the appellant was charged for committing offence under Section 18 of the Act, he pleaded not guilty and claimed trial. The prosecution then examined PW1 ASI Gurdas Singh, PW2 Harjit Singh, Station House Officer, PW3 Constable Gurdev Singh and PW4 Head Constable Pargat Singh. Report of the Chemical Examiner was also tendered in evidence.

When examined under Section 313 Cr.P.C. the appellant denied all the incriminating circumstances which appeared in prosecution case against him. According to him, he

was falsely involved in the case as there was a dispute between him and Gora Singh son of Hans Raj, resident of Jassi Bag Wali. In defence, he examined DW1 Ashok Kumar and DW2 Constable Manjit Singh.

The trial Court, after hearing learned counsel for the parties and perusing the record, believed the prosecution case and convicted and sentenced the appellant, as mentioned above. Hence, the present appeal.

This Court has heard learned counsel for the parties and perused the record with their able assistance.

The recovery of the contraband has been duly proved by the prosecution by way of testimonies of PW1 ASI Gurdas Singh and PW4 Head Constable Pargat Singh. PW3 Constable Gurdev Singh testified that he had deposited the sample parcel with the Chemical Examiner. As per the report of the Chemical Examiner, the sample contained 2% morphine and, thus, the sample was opined to be that of opium.

In view of the above, no case is made out for any interference in the conviction of the appellant.

As regards the quantum of sentence, it may be noticed that the appellant is facing the agony of criminal prosecution for the last more than twelve years. After being arrested in the case on 4.2.2003, he was released on bail on

18.4.2003. Upon his conviction and sentence on 29.3.2005, he was again taken into custody and subsequently released on bail on 7.4.2005. These facts are so stated in the custody certificate produced by the State counsel.

Learned counsel for the appellant has submitted that the appellant is not a previous convict. The contraband recovered from him did not fall within the category of commercial quantity. The appellant has already undergone a period of two months and twenty two days, out of the total sentence of three years imposed upon him. There is no allegation that while on bail, during the pendency of the appeal, the appellant misused the concession in any manner. To the contrary, learned State counsel has submitted that the appellant was found in possession of 525 grams of opium. The menace of drugs is on the increase and needs to be curbed with a heavy hand.

Taking into consideration the totality of the circumstances, this Court is of the considered view that no useful purpose will be served by sending the appellant behind the bars, once again, to undergo the remaining sentence of imprisonment imposed upon him. Ends of justice would be best met, if his remaining sentence of imprisonment is set aside.

Resultantly, the conviction of the appellant under Section 18 of the Narcotic Drugs & Psychotropic Substances Act,

1985 is upheld. His substantive sentence of imprisonment is reduced to the one already undergone by him. At the same time, the amount of fine of Rs.2,500/- imposed upon the appellant is enhanced to Rs.10,000/- and in default thereof, the appellant shall undergo rigorous imprisonment for two months.

The appeal is, accordingly, disposed of.

September 24, 2015
amit rana

(T.P.S. MANN)
JUDGE