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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2707-SB-2015

Date of Decision: 12 .08.2015

SONU

.....Petitioner

Vs.

STATE OF PUNJAB

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

Mr. Arshdeep S. Kler, DAG, Punjab.

1. *Whether Reporters of local papers 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?*

RAJ MOHAN SINGH, J. (Oral)

1) This is an appeal against the judgment of conviction dated 27.10.2014 and order of sentence dated 28.10.2014 vide which appellant was convicted under Section 15 of NDPS Act for keeping 8 Kg of poppy-husk (non-commercial quantity in nature) and was sentenced to undergo RI for 10 months and fine of Rs.10,000/- by Judge, Special Court, Fazilka. The appeal in question was filed along with an application under Section 5 of the Limitation Act, seeking condonation of delay of 161 days in filing the appeal. Vide order dated 09.06.2015 passed by the High Court, delay of 161 days in filing the appeal was condoned along with stay, recovery of fine during pendency of appeal. Notice regarding suspension of sentence was issued for

30.06.2015.

2) On 30.06.2015, this Court passed the following order:-

“Prayer made in this application under Section 389 Cr.P.C. is for suspension of sentence of applicant-appellant Sonu during pendency of the appeal.

Applicant-appellant has been sentenced to undergo rigorous imprisonment for 10 months along with fine of Rs.10,000/-. In the event of default of payment of fine, he shall further undergo rigorous imprisonment for 2 months.

Learned counsel for the appellant states that out of total sentence of 10 months, appellant has already undergone 9 months, 21 days as on 29.06.2015. The alleged recovery is of 8 kgs of poppy husk.

Learned State counsel on instructions from ASI Gurcharan Singh, admits the aforesaid factum of undergoing 9 months 21 days of actual sentence by the appellant. However, he submits that appellant is also involved in two other cases of similar type.

Keeping in view the period already undergone by the applicant-appellant, the remaining sentence of applicant-appellant is suspended during pendency of the appeal. He is ordered to be released on bail subject to furnishing adequate bail bonds to the satisfaction of Chief Judicial Magistrate, Fazilka.

The application stands allowed.

Since the total sentence is of 10 months, let the main case be also listed for 22.07.2015.

Nothing expressed hereinabove would be construed to be an expression of any opinion on merits of the case.”

3) Since the total sentence was of 10 months and the applicant/appellant had already undergone 9 months 21 days of actual sentence, therefore, main case was ordered to be listed for 22.07.2015 after suspending the sentence of the applicant-appellant on his furnishing bail

bonds to the satisfaction of Chief Judicial Magistrate, Fazilka. Accordingly, the final arguments in appeal have been heard.

4) Appellant has been convicted under Section 15 of NDPS Act and sentence to undergo RI for 10 months and to pay fine of Rs.10,000/- in default to further undergo simple imprisonment for two months. The case of the prosecution is that on 05.06.2013, ASI Sukhmander Singh along with his companions was on patrolling duty when the police party reached at the bridge of Sem drain in the area of Dane Wala Satkosi, then one person was coming from the opposite side carrying a plastic bag on his head. On seeing the police party, he got nervous and tried to take turn towards left side of the drain. He was apprehended on suspicion with the help of other companions. On enquiry, he disclosed his name as Sonu S/o Manohar Lal. ASI Sukhmander Singh informed him that he was having suspicion that some contraband was present in his bag and so he wanted to search the same. Accused was apprised of his right that he has right to be searched in the presence of some Magistrate or Gazetted Officer. The accused reposed confidence in the Investigating Officer and thereafter, Investigating Officer proceeded to prepare consent memo. Independent witness from the public was sought to be joined but none was available. On search of plastic bag, poppy husk was recovered. Sampling was done and the total poppy husk was found to be 8 kg. Process of sealing was done and seal after use was handed over to HC Harbans Singh. Case property was taken in police possession vide separate recovery memo. On personal search of the accused, currency notes of Rs.300/- were also recovered. The accused was accordingly tried, convicted and sentenced in the aforesaid manner.

5) Appeal was time barred by 161 days, which was condoned on 09.06.2015 and the matter itself was taken up on the adjourned date i.e.

30.06.2015 and sentence of the applicant was suspended. On that date, total custody was found to be 9 months 21 days, out of total sentence of 10 months. In view of aforesaid, learned counsel for the petitioner states that in view of period already undergone, the consideration of merits of the case would be an academic issue only. Learned counsel states that he would be satisfied in case the appellant is released on the basis of period undergone by him. Having regard to the submissions made on behalf of appellant particularly in view of the fact that appellant had already undergone 9 months 21 days of sentence out of 10 months, reduction of remaining sentence of the applicant is called for.

6) The question of reduction of sentence in NDPS Act matter particularly when recovered contraband is of small quantity of non-commercial in nature, has been considered by the Hon'ble the Apex Court in **2015(1) RCR, CrI. 251, Mukesh Kumar Vs. State of M.P. (now Chhatisgarh)**, and reduction on the basis of period of sentence already undergone has been ordered.

7) Similarly, in **2014 (2) DC (Narcotics) 114, 'Sukhmandar Singh Vs. State of U.T. Chandigarh'**, this Court has reduced the sentence to the period undergone by the accused in NDPS case. Again in **2014, Volume 1 DC (Narcotics) 107, Rajnish Kumar @ Chapta Vs. State of Punjab**, similar benefit has been given to the accused on the basis of period undergone by him in appeal in NDPS case.

8) Accordingly, having regard to the totality of the facts and circumstances, I am of the view that ends of justice will be met, in case sentence of the applicant is reduced to the period already undergone by him.

9) With these observations, appeal is partly accepted. Since the appellant is on bail, he be informed accordingly.

(RAJ MOHAN SINGH)
JUDGE

August 12, 2015
SwarnjitS