

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.

CRA No.S-4304-SB of 2013 (O&M)

Date of decision: 2.12.2015

Karnail Singh @ Kaili

... Appellant

versus

State of Haryana

... Respondent

CORAM: HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.P.S.Sekhon, Advocate,
for the appellant
Ms.Kirti Dalal, DAG, Haryana
...

AMOL RATTAN SINGH, J. (Oral)

CRM No.37205 of 2015

Learned State counsel has placed on record the custody certificate in respect of the applicant/appellant, showing that out of the four year sentence imposed upon him by the learned Additional Sessions Judge, Fatehabad, for the commission of an offence punishable under Section 18 of the NDPS Act, wherein he was found to be in conscious possession of 2 kgs. of opium, he has already undergone actual sentence of three years, five months and ten days as on 1.12.2015. The same is taken on record.

Learned counsel for the applicant/appellant submits that, as a matter of fact, details of pending cases given in the custody certificate are also incorrect, inasmuch as, the appellant has been acquitted in all the four cases shown to be pending against him, in which he is shown to be on bail.

He further submits that the appellant is suffering from weak eye sight and is 62 years of age.

With the consent of learned counsel for the parties, the main appeal itself is taken up for hearing.

CRA-S-4304-SB of 2013

1. Mr.Sekhon has submitted that keeping in view the age of the appellant and the fact that out of the four year sentence imposed upon him, he has already undergone actual sentence of three years, two months and ten days and if the remissions earned by him are added, the appellant is to be treated to have undergone three years, five months and ten days of his sentence, as on 1.12.2015. Thus, only about six and half months of his sentence remains to be completed. As such, he submits that if the sentence of the appellant is reduced to the period already actually undergone by him, he does not press the appeal on merits.

A perusal of the case file shows that the appellant was apprehended coming on a motorcycle from the side of Ratia on 11.7.2012 by ASI Ram Bhagat, E/ASI Om Parkash and EHC Harlabh Singh of Police Station Ratia, District Fatehabad, at Bus Stand Kamana.

Upon seeing the police party, the appellant is stated to have become perplexed and tried to turn back his motorcycle but was apprehended and on suspicion, he and his motorcycle were checked and it was found that a black coloured polythene bag was kept by him on the fuel tank of the motorcycle between his legs. Upon query, the appellant disclosed his name, parentage and place of residence and thereafter, was stated to have become perplexed again when asked about the contents in the

polythene bag. Accordingly, a notice (Ex.P2) is stated to have been given to him, informing him about his legal right to get the search of the polythene bag conducted in the presence of any Gazetted Officer or a Magistrate, and he gave a written consent (Ex.P3), stating that the search may be made in the presence of a Gazetted Officer. ASI Ram Bhagat is then stated to have informed Shri Jagdish Kumar, Deputy Superintendent of Police, who came to the spot after about one hour. The appellant, his motorcycle and the polythene bag were produced before the DSP and on his direction, it was checked and opium was found contained in it.

Two samples of 100 grams each were separated from the recovered opium and the residue was weighed and found to be 1 kg. and 800 grams. The samples, as also rest of the opium, were packed in sealed parcels and the seal of the Investigating Officer ('RB') was affixed on them and the seal itself is stated to have been retained by the DSP.

2. The motorcycle bearing registration No.HR-59-B-7712, as also the sealed parcels were taken into possession vide recovery memo (Ex.P4) and on the personal checking of the appellant, Rs.1300/- in cash, a mobile phone and registration certificate of the motorcycle were recovered and taken into possession vide recovery memo (Ex.P5).

A report (Ex.P11) was sent to the police station and a formal FIR was registered by E/ASI Jeet Singh.

A rough site plan (Ex.P12) is also stated to have been prepared of the place of apprehension and a report under Section 55 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred to as 'the Act'), was prepared, which was later exhibited as Ex.P6/A. The

appellant was arrested vide arrest memo (Ex.P5) and was produced before Inspector Subhash Chander, SHO of the police station, who is stated to have verified the facts from the appellant and the witnesses and affixed his seal, 'SC', on each of the parcels.

Thereafter the appellant is stated to have been produced before the learned Sub Divisional Judicial Magistrate, Ratia, and an application (Ex.P13) was also filed for verification of the inventory, under Section 52-A of the Act and an inventory form (Ex.P14) was also submitted. Order (Ex.P15) was passed by the learned Magistrate, after which the opium was sent to the Forensic Science Laboratory, Madhuban, and thereafter, the final report under Section 173 of the Cr.P.C. was presented to the trial Court.

3. The learned trial Court, having examined 8 prosecution witnesses, including the SHO, the Investigating Officer, and formal witnesses who had deposited the case property etc., recorded the statement of the appellant under Section 313 of the Cr.P.C.

On behalf of the appellant, 4 witnesses appeared in defence, including Jail Warder Surender Kumar, DW2, with regard to proving of medical report of surgery conducted on the appellant as an undertrial prisoner, Joga Singh, DW3, who was brother of the owner of the motorcycle recovered from the appellant, as also Dharmender, DW4, son of the appellant, who stated that his father had been falsely implicated by one Bhola Singh due to rivalry developed in the village elections.

4. Having appraised the entire evidence on record, the learned trial Court found the appellant guilty of being in conscious possession of 2 kgs of opium without any permit or licence and consequently, convicted him

for an offence punishable under Section 18 of the Act and sentenced him to undergo four years rigorous imprisonment, as also directed him to pay a fine of Rs.20,000/-, in default of which he was to further undergo rigorous imprisonment for a period of three months.

5. The above facts having been enumerated for the record in view of the fact that learned counsel for the appellant is not pressing the appeal on merits.

Having considered the facts, in my opinion, in the circumstances of the age of the appellant, and the fact that the appellant was shown before the learned trial Court, by production of Dr.Rajesh Batra, DW1, as a defence witness, to be suffering from low eye sight, as also the fact that out of the four year imprisonment that he was sentenced to, he has already undergone actual sentence of three years, two months and ten days, with another three months of remissions to his credit, the ends of justice would be served by reducing his sentence to the period of imprisonment already undergone by him. It is, therefore, ordered accordingly. The fine imposed by the trial Court is maintained alongwith the default clause that goes with it. Appellant Karnail Singh @ Kaili shall, consequently, be released from custody immediately, upon deposit of fine by him, or after he has served out three months more sentence, in default thereof.

The appeal is disposed of accordingly.

2.12.2015
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(AMOL RATTAN SINGH)
JUDGE