

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No. S-1462-SB of 2003 (O&M)

DATE OF DECISION: 02.12.2015

Varinder Singh @ Kaka

.....Petitioner

Versus

State of Punjab

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment? (Yes/No)**
2. **To be referred to reporters or not? (Yes/No)**
3. **Whether the judgment should be reported in the Digest? (Yes/No)**

Present:- Mr. L.S. Sekhon, Advocate
for the appellant.

Mr. Rupam Aggarwal, DAG, Punjab.

DAYA CHAUDHARY, J.

Appellant-Varinder Singh @ Kaka faced trial in case FIR No. 421 dated 12.12.2001 registered under Section 15 of NDPS Act at Police Station Kotwali, Sangrur and ultimately vide judgment dated 12.7.2003 passed by Judge, Special Court, Sangrur convicted and sentenced the appellant to undergo RI for a period of ten years and to pay a fine of ₹ one lac and in default of payment of fine to further undergo FIR for a period of one year under Section 15 of the NDPS Act.

As per prosecution version, on 12.12.2001, Inspector Sardara Singh, along with other police officials was on patrol duty in official vehicle make 'Tata 407'. The police party was present on bridge of canal minor, on metal led road Julamgarh-Sharon. At about 1.00 pm, one Maruti car of

grey colour came from the side of Sharon, which was signalled to stop but the driver of the car tried to turn it on the road side of katcha path. On having suspicion, the Investigating Officer got the vehicle stopped by raising a lalkara and apprehended the accused with the help of other members of his police party. Upon interrogation, the driver of the car told his name as Varinder Singh @ Kaka. On checking of the car, some bags were seen to be kept on its back side, which seemed to contain some intoxicant material therein. The Investigating Officer told the accused that search of his person as well as search of the car is required to be done and accordingly an intimation was sent to DSP, who reached at the spot after some time and disclosed his identity. The search was conducted in his presence. Statement of the accused was recorded, which was duly signed by him. Upon search, five gunny bags were taken out of the car containing poppy husk. Out of each bag, 2 samples of 250 gms each, were separated and were converted into separate parcels. Upon being weighed, remaining contraband came to be 34-1/2 kgs in each bag, which was also converted into separate parcels. After recording the statements of the accused and witnesses, the accused was arrested. On completion of necessary formalities, an intimation was sent to SHO and FIR was registered. The car was also taken into possession. SHO deposited the case properly with MHC Avtar Singh and samples were sent to Chemical Examiner. Thereafter, challan was presented and copies of documents, as provided under Section 207 Cr.P.C., were supplied to the accused. Charge under Section 15 of the NDPS Act was also framed against the accused, to which he pleaded not guilty and claimed trial.

The prosecution in order to prove its case examined as many as nine witnesses. Thereafter, the statement of accused under Section 313 Cr.P.C. was recorded, wherein, he pleaded innocence by stating that he

has falsely been implicated. In defence, accused-appellant examined Bharpur Kaur as DW-1 and closed the defence evidence.

On appraisal of evidence available on record, the trial Court convicted and sentenced the accused-appellant as mentioned above.

Aggrieved by the said judgment of conviction and order of sentence, the present appeal has been filed by the accused-appellant which was admitted on 18.8.2003 and recovery of fine was also stayed. Thereafter, the sentence imposed upon the appellant was suspended by this Court vide order dated 14.3.2007.

Learned counsel for the appellant submits that the appellant has a good case on merits as the mandatory provisions of NDPS Act have not been followed with respect to recovery and seizure and non-compliance thereof has vitiated the prosecution case. Learned counsel further contends that the search of the car was conducted by violating the mandatory provisions of Section 42 of NDPS Act. In spite of having ample opportunity neither any independent witness was joined nor any efforts were made to join any witness from public. One Chitta Singh was associated but he was not examined. The appellant is not the owner of the car and the prosecution has failed to prove as to under what circumstances the appellant was in possession of the car. The prosecution did not make any efforts to record the statement of owner of the car. It is also the argument of learned counsel for the appellant that serious contradictions and discrepancies are there in the statements of the prosecution witnesses. The investigating agency has failed to place on record the cogent evidence to establish that the samples of contraband remained intact till its deposition in the office of FSL. Even the statement of defence witness produced by the appellant was not considered by the learned trial Court. At the end, learned counsel for the appellant submits that the

appellant is likely to complete the substantial sentence of ten years including remissions and no other case under the NDPS Act is pending against him. He also submits that the appellant is a poor person and is not in a position to deposit the amount of fine, which is ₹ one lac and he prays for reducing of the sentence to the period already undergone by him.

Learned counsel for the respondent-State submits that the appellant has not completed his requisite period of sentence of 10 years and even the amount of fine has not been deposited by him till date. He further submits that in case the remissions are also included, the undergone period comes to 9 years, 9 months and 10 days till 16.3.2007.

Heard the arguments advanced by learned counsel for the appellant as well as State and have also gone through the record of the trial Court and other documents available on the file.

Admittedly, the appellant was arrested on 12.12.2001 and remained in custody upto 16.3.2007. Thereafter, sentence imposed upon the appellant was suspended by this Court on 14.3.2007. As per custody certificate dated 8.9.2015, filed by learned counsel for the respondent-State, total actual undergone period of the appellant comes to four years, nine months and ten days. The appellant has also earned remissions of five years and in case that period is included, the total custody comes to nine years, nine months and ten days. The appellant has also suffered agony of trial from the date of lodging of the FIR i.e. 12.12.2001. There is no other case of NDPS Act against the appellant. As per submission made by learned counsel for the appellant, the appellant is not in a position to deposit an amount of ₹ one lac and that the appellant will make all efforts to arrange the amount if possible.

After hearing the arguments advanced by learned counsel for the parties and on perusing the evidence available on the record, I am of

the view that no interference in the well reasoned judgment of the trial Court is required. Accordingly, the present appeal being devoid of any merit is hereby dismissed and judgment of conviction and order of sentence passed by the trial Court is upheld.

Keeping in view the submission made by learned counsel for the appellant and taking into consideration the financial position of the appellant, the sentence of ten years in NDPS offence, where, the quantity is commercial cannot be reduced to the period already undergone. However, in case the appellant does not deposit the amount of fine of ₹ one lac, the sentence in default of payment of fine is reduced to three months from one year.

December 02, 2015
pooja

(DAYA CHAUDHARY)
JUDGE