

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

CRA S-4842-SB of 2015 (O&M)

Decided on: 17.12.2015.

Jaswinder Kaur @ Bholi

... Appellant

Versus

State of Punjab

... Respondent

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Vivek Goel, Advocate,
for the appellant.

Mr. Mehardeep Singh, DAG, Punjab.

JITENDRA CHAUHAN.J.

This appeal is directed against the judgment of conviction and the order of sentence dated 18.9.2015 passed by the Judge, Special Court, Moga vide which the accused-appellant was convicted under Section 15 of NDPS Act, 1985 and sentenced to undergo RI for a period of one year and to pay fine of Rs.4000/- with default stipulation.

The prosecution case in brief is that on 7.10.2013, the police party headed by ASI Harbans Singh along with ASI Amarjit Singh, HC Lakhwinder Singh and other police officials in connection with patrolling and in search of suspected persons, were going from village Darol Bhai to village Gajjanwala. When the police party reached canal bridge, in the area of village Gajjanwala, one lady was

noticed coming from the side of village Gajjanwala. She was carrying a

gunny bag on her head. On seeing the police party, she tried to turn back but on the basis of suspicion, she was intercepted by ASI Harbans Singh and asked about her whereabouts. She told her name as Jaswinder Singh Kaur @ Bholi wife of Sukhdev Singh. ASI Harbans Singh told the accused that he suspected that some intoxicant substance has been kept in the gunny bag carried by her and he wanted to search the same. Before conducting search, ASI Harbans Singh apprised the accused of her legal right to conduct search in the presence of some Gazetted Officer or Magistrate but the accused reposed confidence in ASI Harbans Singh to get the search of bag conducted. Accordingly, consent memo was prepared, upon which the accused put her thumb impression and ASI Amarjit Singh and HC Lakhwinder Singh witnessed the same. Thereafter, search of gunny bag was conducted, which led to recovery of poppy husk. The accused could not produce any permit or license for possessing the poppy husk. A sample of 250 gms of poppy husk was separated and converted into sample parcel. The remaining poppy husk was weighed which came to 19.750 kgs.

After completion of necessary formalities of investigation, the challan/report under Section 173 Cr.P.C was presented in the Court.

Charge under Section 15 of NDPS Act was framed against the accused to which the accused did not plead guilty and claimed trial.

After holding trial, vide the impugned judgment and the order, the trial Court convicted and sentenced the accused as narrated above.

Feeling dis-satisfied with the impugned judgment and the order, the present appeal has been filed.

At the outset, learned counsel for the appellant submits that he does not challenge the judgment of conviction on merits but prays that a lenient view in the matter of sentence be taken keeping in view the fact that out of substantive sentence of one year, the appellant has already undergone actual sentence of 3 months and 27 days. The appellant has seven daughters to look after. One of the daughters is of marriageable age. She is the sole bread earner of her family as her husband is a drug addict. The quantity recovered from the appellant is non-commercial. The daughters of the appellant have been suffering starvation and the father being a drug addict, are exposed to bad company of the drug addicts, who visit the house of the appellant in her absence.

Keeping in view the aforesaid mitigating circumstances, this Court is of the opinion that the ends of justice shall be sufficiently met in case the sentence of the appellant is reduced to the period already undergone by her subject to the payment of enhanced amount of Rs.3000/- over and above the amount of fine ordered by the trial Court. Ordered accordingly.

The appellant is in custody, she be released forthwith
if not required in any other case.

The appeal is allowed to the extent indicated above.

17.12.2015.
SN

(JITENDRA CHAUHAN)
JUDGE