

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2263-SB-2003
Date of decision: 06.05.2015

Darshan Kumar

...Appellant

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present : Mr. Ishwar Lal, Advocate for the appellant.

Mr. M. D. Sharma, Assistant Advocate General, Haryana.

Raj Rahul Garg, J. (Oral)

Appellant Darshan Kumar has filed this appeal against the judgment of conviction dated 16.10.2003, rendered by Mr. Raj Kumar, the then Additional Sessions Judge, Panipat, whereby the appellant was convicted for committing offence punishable under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 for keeping in his possession 21 KG of poppy straw and vide order of even date sentenced RI for one year and a fine of Rs. 2000/- with default clause.

Brief facts of the prosecution case are like this; that on 11.05.2002, the police party, headed by ASI Shri Krishan, was present at Bus Stand, Panipat. There, the accused was apprehended on the basis of suspicion having two bags. Thereafter, by giving notice under Section 50 of NDPS Act (Ex. PD), the accused was given offer to be searched either in the presence of a Magistrate or a Gazetted Officer, to which he opted to be searched by the Investigating Officer. On search, 11 packets of poppy straw

from one bag and 10 packets of poppy straw from the second bag were recovered. Each packet was containing 1 KG poppy straw. From each bag 1 packet was taken out. Two samples of 250 grams were taken from each bag. Remaining poppy straw was put in the same bags and the same were made into two separate parcels. All the parcels were sealed with the seal of 'SK' and were taken into police possession, vide recovery memo (Ex. PE). The seal after use was handed over to Constable Devender Singh. Ruka was sent to the police station on the basis of which formal FIR No. 351 dated 11.05.2002, under Section 15 of NDPS Act, 1985, PS-City Panipat, was recorded. Rough site plan of the place of recovery was prepared. Statements of the witnesses were recorded. Thereafter accused, witnesses, case property, sample parcels and impression seal were produced before Inspector Randhir Singh, who verified the same and affixed his seal 'RS' on all the parcels. Case property was deposited with the MHC of the police station. After completion of investigation, challan was prepared and sent to the Court for trial.

Finding a prima-facie case against accused-appellant for committing offence punishable under Section 15 of the Act, he was charge sheeted accordingly to which he did not plead guilty but claimed trial.

The prosecution in support of his case examined HC Dharam Pal as PW-1, Constable Sat Narain as PW-2, Constable Raj Singh as PW-3, Constable Devender Singh as PW-4, ASI Shri Krishan as PW-5 and Inspector Randhir Singh as PW-6. Prosecution has also tendered FSL report in evidence as Ex. PH.

Thereafter, statement of accused under Section 313 Cr.P.C. was

recorded. Every incriminating material, coming on record, was put to him which was denied by the accused-appellant. Accused pleaded his false implication. During trial, learned defence counsel contended that the prosecution has not joined independent witness despite opportunity. It was also pointed out that the site plan is defective and the prosecution did not comply with the mandatory provisions of Section 50 of NDPS Act.

After hearing both counsel for the parties and appraisal of the entire material coming on record, the learned trial Court recorded the impugned judgment of conviction against the accused and sentenced him as mentioned in earlier part of this judgment.

Aggrieved against the impugned judgment of conviction and sentence, convict/appellant preferred his appeal before this Court.

During the course of hearing of arguments, learned counsel for the appellant has contended that he does not contest the findings, recorded by the learned trial Court, on merits of the case. He would feel satisfied if some leniency is shown in the matter of sentence. He further contends that the appellant has already undergone the agony of trial. He has also placed custody certificate on record according to which the accused-appellant has already served sentence more than 5 months out of one year till date. Learned counsel for the appellant further requested that the ends of justice would be met if some leniency is shown to the accused/appellant in the matter of sentence. As such, his sentence may be reduced to the one already undergone.

FIR is of the year 2002. Accused has faced protracted trial. He has already undergone agony of trial. He is the only earning member of the

family. As such without going into the merits of the case but keeping in view the fact that the accused-appellant has already undergone sufficient period of sentence and further that now he is feeling for the offence committed by him, I find it a case where the reduction of sentence of the accused-appellant would serve the ends of justice. As such, while maintaining the impugned judgment of conviction dated 16.10.2003 against the accused-appellant, the sentence awarded by the trial Court, is reduced to one already undergone. His bail bonds and surety bonds are discharged. Sentence of fine awarded to the convict-appellant is maintained as it is.

In view of the above discussion, this appeal is dismissed with the above modification.

(RAJ RAHUL GARG)
JUDGE

06.05.2015

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