

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

CRR-723 of 2007 (O&M)

Date of decision: 21.09.2015

Amrik Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Sarbjit Singh, Advocate for the petitioner.

Mr. Mehardeep Singh, DAG, Punjab
for the State.

Jitendra Chauhan, J.

By filing the present criminal revision, the petitioner has assailed the judgment dated 09.04.2007, vide which, the learned Addl. Sessions Judge, Amritsar, dismissed the appeal filed by the petitioner against the judgment of conviction dated 24.01.2006, passed by the learned Sub Divisional Judicial Magistrate, Patti, whereby, the petitioner was convicted for the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter called as 'the Act') and sentenced him to undergo rigorous imprisonment for six months, and to pay a fine of

₹2000/- or in default of payment thereof, to further undergo rigorous imprisonment for 1½ months.

The prosecution case against the petitioner is that on 23.04.2002, the petitioner was apprehended while he was having in his possession 3½ grams of smack, without any permit or licence.

On commitment, the accused was charged under Section 21 of the Act, to which the accused/petitioner pleaded not guilty and claimed trial.

In support of the case of prosecution, it examined PW-1 Constable Gurjant Singh; PW-2 Constable Chaman Singh; PW-3 ASI Balwinder Singh, the recovery witness; PW-4 DSP Rajinder Pal, the recovery witness and PW-5 SI Ram Nath, Investigating Officer.

The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded not guilty and alleged false implication. The accused/petitioner did not lead any evidence in his defence.

After hearing the Public Prosecutor for the State, the Counsel for the accused, and after going through the evidence, on record, the trial Court convicted and sentenced the accused/petitioner, as stated hereinbefore.

Feeling aggrieved against the judgment of conviction and the order of sentence passed by the trial Court, the instant revision petition filed by the petitioner was admitted on 26.04.2007.

The sentence of accused/petitioner was suspended on the same day.

The learned counsel for the petitioner does not press the appeal on merits and has submitted that the petitioner has suffered agony of protracted trial as the FIR was registered on 23.04.2002. The petitioner is the only bread earner of his family. He has never misused the concession of bail during the trial as well as during the pendency of the present appeal. He is a first offender and he has already undergone 28 days out of substantive sentence of six months. Thus, the learned counsel prays for a lenient view on the quantum of sentence imposed by the trial Court.

On the other hand, the learned State counsel opposed the prayer of petitioner and supported the judgment of conviction and order of sentence passed by the trial Court.

I have heard the arguments of the learned counsel for the parties and has carefully gone through the record of the case.

The prosecution case is fully proved by the statements of the prosecution. There is no flaw in the unassailed judgment of conviction. There is no merit in this appeal which is dismissed on merits. The conviction is upheld.

In **Ghasita Sahu Vs. State of Madhya Pradesh, 2008** (1) RCR (Criminal) 901, it has been held that since the quantity recovered was less than the commercial quantity though more than the small quantity, the punishment awarded was reduced to already undergone.

Further in **Ramakant Gopalsaran Shahu Vs. State of Gujarat**, 2005(3) RCR (Criminal) 204, it has been held as under:-

“9. In the case before us, since the contraband article recovered from the house of the petitioner weighing 1 Kg. and 300 gms. is neither a small quantity nor a commercial quantity but less than commercial quantity and more than small quantity, Sec.20(b)(ii)(B) has to be kept in mind. This means that proportion of sentence in relation to quantity has to be maintained by the Court. If the trial court fails to maintain the proportion and award sentence regardless of quantity recovered, there would be disparity in the sentence awarded. Since the quantity recovered from the present petitioner is only 300 gms. more than the small quantity and 19 kgs. less than the commercial quantity, the sentence prescribed may extent to 10 years. However, merely because the sentence prescribed by the legislature may extent to 10 years, it should not ordinarily be awarded by the trial court for the aforesaid period but for a period keeping in mind the quantity of contraband substance recovered. In the present case, the trial court has awarded R.I. of 10 years with a fine of Rs.1,00,000/-which appears to be unjust, improper and disproportionate. Besides, the trial court has not exercised its discretionary power while awarding alternative sentence also. In default of payment of fine, it has awarded five years R.I. Hence, we are of the opinion that even for fine also, same proportion is required to be maintained.”

The FIR in the instant case was registered on 23.04.2002. The petitioner has suffered agony of protracted criminal

trial. The protracted trial is a mitigating circumstance in favour of the petitioner. The petitioner is stated to be a first time offender. The petitioner has never repeated the offence or misused the concession of bail. He has already undergone about 28 days, out of the substantive sentence of six months. In view of the above, the prayer made on behalf of the petitioner regarding reduction of sentence is accepted. The sentence awarded to the petitioner is ordered to be reduced to the period already undergone. Ordered accordingly.

However, the same shall be subject to enhancement of fine of ₹20,000/- over and above already imposed by the Courts below to be paid within four months after the receipt of certified copy of the order. It is made clear that if the enhanced amount of fine is not paid with the Chief Judicial Magistrate, concerned within the stipulated period, the present appeal shall be deemed to be dismissed without any notice and thereby the petitioner shall have to undergo the remaining part of the sentence.

With the above reduction in the sentence, this appeal fails on merit and is dismissed.

21.09.2015

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(JITENDRA CHAUHAN)
JUDGE