

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. W.P. No. 1255 of 2015

DATE OF DECISION: 2.12.2015

Gurdeep @ Deepa

.....Petitioner

Versus

State of Haryana

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. Whether reporters of local newspaper may be allowed to see judgment? (Yes)
2. To be referred to reporters or not? (Yes)
3. Whether the judgment should be reported in the Digest? (Yes)

Present:- Mr. DR Punia, Advocate
for the petitioner.

Mr. BS Virk, DAG, Haryana.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 482 Cr.P.C. read with Article 21 of the Constitution of India for release of the petitioner on completion of his substantial sentence.

Briefly, the facts of the case are that the petitioner was accused in case FIR No. 21 dated 9.1.2004 registered under Section 15 of NDPS Act at Police Station Sadar Tohana, District Fatehabad and was convicted and sentenced to undergo RI for a period of ten years with fine of ₹ 1 lac vide judgment dated 11/12.5.2007. Subsequently, another FIR No. 24 dated 12.1.2004 was also registered against the accused under Section 15 of NDPS Act at Police Station Sadar Tohana and he was convicted and sentenced to undergo RI for a period of four years with fine of ₹ 10,000/-

vide judgment dated 11/12.5.2007 passed by the Additional Sessions Judge, Fatehabad. Thereafter, he was also convicted in one more case i.e. FIR No. 46 dated 23.2.2004 registered under Section 15 of NDPS Act at Police Station Adampur, District Hisar vide judgment dated 23/24.11.2005 and was sentenced to undergo RI for a period of ten years with fine of ₹ 1 lac with default clause.

Aggrieved against the aforesaid judgments of conviction and orders of sentence passed by the trial Court, the petitioner preferred three different appeals before this Court i.e. Crl. Appeal No. S-1505-SB of 2007, Crl. Appeal No. S-1665-SB of 2007 and Crl. Appeal No. S-340-SB of 2006. Crl. Appeal Nos. S-1505-SB of 2007 and 1665-SB of 2007 were dismissed by a common judgment dated 20.9.2013 but both the sentences were ordered to run concurrently.

In Criminal Appeal No. S-340-SB of 2006, the recovery was 20 kgs of poppy husk and the sentence was ordered to be reduced to the period already undergone by the petitioner vide judgment dated 20.9.2013 passed by this Court. However, the sentence of fine was ordered to remain the same.

Now the present petition has been filed for release of the petitioner on the ground that in two appeals i.e. Crl. Appeal Nos. S-1505-SB of 2007 and 1665-SB of 2007, the sentence was ordered to run concurrently and the appellant had completed the sentence. In the third appeal i.e. Crl. Appeal No. S-340-SB of 2006, the conviction was upheld but the sentence was reduced to the period already undergone by the petitioner. Learned counsel also submits that the petitioner has completed his substantial sentence but still the case of the petitioner has not been considered. To support his submission, learned counsel has also relied upon the judgment of this Court rendered in **Kashmiri V. State of Haryana**

2012 (5) RCR (Criminal) 390 as well as of Kerala High Court rendered in **Zacharia Vs. State** 2011 (3) RCR (Criminal) 803 and **Sebastian @ Yesudas Vs. State of Kerala** 2012 (3) RCR (Criminal) 834.

Learned State counsel has filed custody certificate and the same is on record. The disposal of aforesaid three appeals by this Court has not been disputed.

Heard the arguments advanced by learned counsel for the petitioner as well as learned counsel for State and have also gone through the documents available on the file.

Admittedly, Crl. Appeal Nos. S-1505-SB of 2007 and 1665-SB of 2007 were dismissed by this Court on 20.9.2013 but order of running the sentences concurrently was passed. In Crl. Appeal No. S-1505-SB of 2007, the petitioner was convicted for offence punishable under Section 15 of NDPS Act for having in his possession one quintal and twenty kgs of poppy husk and was sentenced to undergo RI for a period of 10 years with fine of ₹ 1 lac with default clause. Similarly, in Crl. Appeal No. 1665-SB of 2007, the petitioner was convicted for offence punishable under Section 15 of NDPS Act for possessing thirty five kgs of poppy husk and was sentenced to undergo RI for a period of four years with fine of ₹ 10,000/- with default clause. Both the aforesaid two appeals were dismissed by this Court vide order dated 20.9.2013 but order of running the sentence concurrently was passed, meaning, thereby the petitioner was to undergo total sentence of ten years. As per custody certificate (Annexure R-3), the petitioner remained in custody w.e.f. 12.3.2004 to 11.5.2007 during trial, which comes to three years and two months. Thereafter he remained in custody from 14.11.2009 to 13.1.2015 after conviction for a period of five years and two months. Thus, the total undergone period comes to eight years and four months. The other custody certificate dated 8.9.2015 was

filed with reply by way of an affidavit of Deputy Superintendent of Police, Tohana, wherein, custody period during trial has been reflected as three years and two months w.e.f. 12.3.2004 to 11.5.2007 and that after conviction has been reflected as five years, nine months and twenty days w.e.f. 14.11.2009 to 8.9.2015. The total period comes to eight years, eleven months and twenty five days. In the aforesaid certificate, the parole period availed of by the petitioner is five months and eighteen days and after deducting the period of parole, the actual undergone period comes to eight years, six months and seven days. After including remissions, it comes to nine years and seven days.

In reply dated 14.10.2015 filed by Superintendent, Central Jail-I, Hisar, the petitioner remained in custody during trial w.e.f. 12.3.2014 to 11.5.2007, which comes to three years and two months. The custody period after conviction w.e.f. 14.11.2009 to 14.10.2015 is five years, eleven months and one day. The total undergone period comes to nine years, one month and one day but after deducting parole period of five months and eighteen days, the actual sentence comes to eight years, seven months and thirteen days as on 14.10.2015. In case the remission period is included, the custody period comes to nine years, one month and thirteen days, which comes to less than ten years. Thus, it is clear that the petitioner has not completed the substantial sentence even after passing of order of running the sentences concurrently. The custody certificates would also show that the sentence of third case has not even started as it was to start on completion of ten years of sentence. The order of reducing the sentence to the period already undergone was passed by this Court when the sentence has not even started and the petitioner cannot avail the benefit of the same. The order of reducing the sentence to the period already undergone could have been passed only in case the petitioner had

undergone some portion of the sentence. It appears that by misrepresenting the facts before the Hon'ble Bench, this order has been obtained. When the sentence has not even started, the question of reducing the sentence to the period already undergone does not arise at all. Moreover, the petitioner was convicted and sentenced to undergo RI for a period of ten years and minimum sentence in case of commercial quantity has been prescribed which cannot be less than ten years.

Accordingly, the submissions made by learned counsel for the petitioner are totally baseless and contrary to the record and the same cannot be accepted. Hence, the present petition being devoid of any merit is hereby dismissed.

2.12.2015
pooja

(DAYA CHAUDHARY)
JUDGE