

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

CRA-S No.169-SB of 2004

Date of decision: 2nd February, 2016

Gurdeep Singh

... Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Amarjit Markan, Advocate
for the appellant.

Mr. C.S. Brar, Dy. Advocate General, Punjab.

FATEH DEEP SINGH, J.

The convict/appellant Gurdeep Singh through the instant appeal has challenged the judgment of conviction and order of sentence dated 10.01.2004 passed by learned Judge, Special Court, Sangrur in case FIR bearing No.192 dated 23.09.1998 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'the Act') pertaining to Police Station Dhuri.

Heard Mr. Amarjit Markan, Advocate for the appellant, Mr.C.S. Brar, Dy. Advocate General, Punjab and perused the records of the case.

The brief accusations of the prosecution are that on 23.09.1998, a police party headed by SI Inderjit Singh in the area of village Pedhni near the bridge of the drain came across the accused coming on foot from the opposite side carrying a plastic bag on his head, who was apprehended on suspicion and on search of the bag led to recovery of poppy husk weighing 8 kilograms. The Investigating Officer drew two samples each weighing 250 grams out of the contraband and the residual on weighment came to 7.50 kgs, all of which were prepared by way of three separate parcels and were sealed bearing seal impressions 'IS' and the sample seal impression Ex.P1 was also prepared and all the articles were taken into police possession through recovery memo Ex.PC. On personal search of the accused, currency notes of the denomination of ₹50/- were recovered and were taken into possession vide memo Ex.PD. Thereafter, the Investigating Officer sent ruqa Ex.PF to the Police Station leading to registration of the FIR Ex.PF/1. After preparing rough site plan of the place of recovery Ex.PG and on recording of statements of the witnesses, the accused was formally arrested through memo Ex.PE. On receipt of report of analysis Ex.PH and on completion of the investigations, challan was presented.

To prove its accusations against the accused, prosecution examined PW-1 MHC Bhupinder Singh, PW-2 ASI Surinder Pal Singh, PW-3 SI Inderjit Singh, PW-4 Constable Avtar Singh and PW-5 SI Gurdev Singh. The accused denied the prosecution allegations in his statement under Section 313 Cr.P.C. and in his defence tendered

copy of the judgment dated 24.07.2001 Ex.D1. It is consequent thereupon, the impugned findings were recorded where the trial Court held the accused guilty of commission of the offence under Section 15 of the Act and awarded him rigorous imprisonment for seven months and to pay a fine of ₹3,000, and in default of payment of fine to further undergo rigorous imprisonment for two months.

Learned counsel representing the appellant, Mr. Amarjit Markan, Advocate at the very onset of his submissions, has contended that the appellant has already undergone almost seven months of the sentence and has prayed that the same be considered to set-off the sentence already undergone by the appellant.

Though the same is sought to be faintly opposed by Mr.C.S. Brar, Dy. Advocate General, Punjab contending that the appellant has been found guilty of being in possession of contraband and therefore, does not entitles to any compassion.

Learned counsel for the appellant has only challenged the very quantum of sentence so awarded by the trial Court in his arguments before this Court. Having regard to the fact that the appellant has been held to be guilty for being in illegal and unauthorized possession of 8 kg of poppy husk, a non-commercial quantity, and that out of the awarded sentence of 7 months he has undergone detention for a period of 6 months and 20 days as per the custody certificate placed on the record by learned State counsel and having regard to the age of the appellant, his obligations towards his family and the fact that for such a quantity he has already undergone

trauma of trial for a period of more than 17 years and thus, his entire life must have been thrown to jeopardy. Learned State counsel squarely accepts that there is no other criminal case pending against the appellant nor there is any previous conviction in any case including NDPS Act.

Thus, taking a compassionate and lenient approach into the matter and in view of these extraordinary circumstances, it would sub-serve the ends of justice if the sentence so awarded to the appellant is reduced to the period already undergone.

With these modifications in the impugned judgment, the appeal is allowed and disposed off in those terms. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

February 2, 2016
rps