

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

(1) CRA-S-718-SB of 2004.
Decided on:-13.1.2016.

Amro.

.....Appellant.

Versus

State of Punjab.

.....Respondent.

(2) CRA-S-768-SB of 2004.

Fauja Singh.

.....Appellant.

Versus

State of Punjab.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers 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. Narinder Singh, Advocate
for the appellant(s).

Mr. Sultan Singh Gill, DAG, Punjab.

HARI PAL VERMA, J.

This order shall disposed of the aforementioned two appeals as the same have arisen from a common judgment and order dated 11.3.2004 passed by learned Judge, Special Court, Sangrur in case bearing FIR No.55 dated 5.6.2003 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the Act), registered at Police Station,

Amargarh, District Sangrur.

Learned trial Court vide judgment and order dated 11.3.2004 had convicted the appellants under Section 15 of the Act and sentenced them to undergo rigorous imprisonment for 10 months and to pay a fine of Rs.3,000/- each and in default therefore, to undergo further rigorous imprisonment for 3 months each.

Learned counsel for the appellants, at the very outset, has submitted that in view of confession made by both the appellants before the trial Court, he does not propose to challenge the conviction on merits. However, he has submitted that taking into consideration the small quantity i.e. 26 Kegs. poppy husk recovered from the appellants, the imprisonment awarded by the trial Court is on higher side. He has, therefore, prayed that the sentence awarded to both the appellants may be reduced to the period already undergone by them. He has further submitted that as against the awarded sentence of 10 months, appellant Amro has remained in custody for 7 months and 6 days, whereas appellant Fauja Singh has remained in custody for 6 months and 9 days. There is no other case pending against both the appellants under the Act and they are suffering the agony of trial since 5.6.2003, when the FIR in question was registered against them. In support of his contentions, learned counsel for the appellant has relied upon the recent judgment of a co-ordinate Bench of this Court in ***CRA-S-1426-SB of 2004*** titled as ***Mangat Ram Versus State of Punjab*** decided on 6.1.2016

wherein the accused was convicted under Section 21 of the Act and sentenced by the trial Court to undergo RI for seven years. However, this Court has reduced his sentence for a period of three years.

Learned State counsel, on the other hand, has not controverted the fact that the appellants have already suffered incarceration for the period mentioned above. Learned State counsel has filed the custody certificates of both the appellants in the shape of affidavit executed by Hardeep Singh, PPS, Superintendent, District Jail, Sangrur. The same are taken on record.

Learned State counsel has not disputed the recovery of poppy husk from the appellants. He has further submitted that as per the custody certificates, both the appellants were neither required nor involved in any other case. However, appellant Fauja Singh was undergoing sentence in case FIR No.38 dated 21.4.1998 under Sections 148, 325, 427, 224 and 341 IPC registered at Police Station Sadar Nabha at the time of his conviction in this case. Both the appellants did not commit the jail offence during their incarceration.

I have heard learned counsel for the parties.

Though learned counsel for the appellants has not proposed to argue the case on merits and confined his arguments with regard to quantum of sentence only, yet, to satisfy the conscience of this Court, the entire material available on record has been re-scanned. There appears to be substance in the submissions made by learned counsel for the appellants that

the appellants are not required nor involved in any other case under the Act and they have not committed any jail offence and have joined the main stream of the society. As such, it would be too harsh to send them to jail once again.

Therefore, taking into consideration the judgments of this Court in *Mangat Ram's case (supra)* and in view of the totality of the facts and circumstances of the case, particularly considering the custody of the appellants, wherein as against the awarded sentence of RI for 10 months, appellant Amro has remained in custody for 7 months and 6 days, whereas appellant Fauja Singh has remained in custody for 6 months and 9 days, the substantive sentence of both the appellants is reduced to the period already undergone by them. However, as regards fine, the same is enhanced from Rs.3,000/- to Rs.5,000/- each. Both the appellants shall deposit the fine with the trial Court within one months. In default of payment of fine, the appellants would undergo RI for the remaining period of sentence.

With the above modification in the order of sentence, both the appeals are dismissed.

Photocopy of this order placed on the file of other connected case i.e. CRA-S-768-SB of 2004 titled as "Fauja Singh Versus State of Punjab.

January 13, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE