

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

**Crl. Appeal No.S-2236-SB of 2016 (O&M)
Date of Decision: November 28, 2016**

Arun Kumar

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jagdeep Singh Virk, Advocate
for the appellant.

Mr.Vikas Chopra, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction dated 09.05.2016 and order of sentence dated 12.05.2016 passed by learned Addl. Sessions Judge-cum-Special Judge (under NDPS Act, 1985), Kurukshetra, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of ₹5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months under Section 21 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge-cum-Special Judge (under NDPS Act, 1985), Kurukshetra, are as under:-

“2. Briefly stating the allegations put forth by the prosecution are that on the basis of suspicion a police party headed by ASI Pawan Kumar had intercepted the accused near Janta School Jhansa Road Kurukshetra on the basis of suspicion and on search, on his person, he was found in possession of 12 grams of Heroin. As per prosecution the Investigating Officer had conducted all the usual formalities, prescribed under the statute, on the spot as well as in the police station, such as preparation of site plan of place of recovery, sending of samples to FSL Madhuban preparation of various memos and recording of statements of witnesses u/s 161 Cr.P.C. On completion of usual formalities of investigation, the report under Section 173 Cr.P.C. was prepared and presented in the Court.”

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 21 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Sh.Jarnail Singh, learned CJM, Kurukshetra, PW-2 Constable Manjeet Singh, PW-3 ASI Phool Singh, PW-4 Constable Parveen Kumar, PW-5 SI Mahesh Kumar, SHO, PW-6 Constable Dalbir Singh, PW-7 Constable Ashok Kumar, PW-8 SI (Retd.) Dharam Pal, PW-9 HC Rajesh Kumar and PW-10 ASI Pawan Kumar, Investigating Officer.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence,

convicted and sentenced the accused-appellant, as stated above.

At the time of arguments, learned counsel for the appellant did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellant. Learned counsel for the appellant contended that 12 grams of heroin has been recovered from the accused-appellant, which falls under non-commercial quantity. He further contended that the appellant is only bread earner of the family and is suffering from criminal proceedings since 2014. He further contended that accused-appellant has already undergone actual sentence of 6 months and 10 days.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. There is nothing on the record to show false implication of the accused in the present case. He next argued that PWs have consistently deposed regarding the recovery from the accused. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

In view of the evidence, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 09.05.2016 passed by learned Addl. Sessions Judge-cum-Special Judge (under NDPS Act, 1985), Kurukshetra, is correct, as per law and does not require any interference from this Court.

However, keeping in view the facts and circumstances of the present case and in view of the fact that appellant is only bread earner of the family and is suffering from long protracted criminal proceedings since

appellant has already undergone actual sentence of 6 months and 10 days out of the total sentence as on 11.05.2016 and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 12 grams of heroin, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and in default thereof shall remain the same. The appellant is directed to pay the fine within one month from the date of receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

Since, appellant Arun Kumar is on bail, his bail/surety bonds stand discharged.

November 28, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No