

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

**Crl. Appeal No.S-2796-SB of 2016 (O&M)
Date of Decision: December 02, 2016**

Kiran Pal

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep Kotla, Advocate
for the appellant.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Haryana, challenging the judgment of conviction dated 28.07.2016 and order of sentence dated 01.08.2016 passed by learned Addl. Sessions Judge, Panipat, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of ₹3,000/- and in default of payment of fine, to undergo simple imprisonment for a period of two months under Section 15 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Addl. Sessions Judge, Panipat, are as under:-

“2. Briefly the prosecution case is that on 28.6.2014 SI Har Narain alongwith ASI Raj Pal Singh, ASI Ram Kumar and

Constable Sandeep was present at entry gate of Bus Stand Panipat in connection with patrolling and crime checking duty. In the meantime, a young boy was seen coming from bus stand and he was having a bag in his right hand. On seeing the police party ahead, he turned back and started to walk briskly. On suspicion, he was apprehended by SI Har Naryaan with the help of other police officials. He disclosed his name as Kiran Pal son of Gurnam Singh resident of Village Nagla Khalsa District Yamuna Nagar. A notice under section 50 of the NDPS Act was served upon the accused appraising him of his legal right of search to be effected in the presence of a gazetted officer or a Magistrate. The notice was read over and explained to the accused which was signed by him. He submitted reply to the notice stating that he had full faith upon the SI and that he did not want to get himself personally searched in the presence of a gazetted officer or a Magistrate. ASI Ram Kumar took the personal search of SI Har Narayan before search of accused and in this regard, a search memo was prepared separately. Thereafter, SI Har Narayan conducted search of bag and 'doda post' (poppy straw) was found. The accused could not produce any license or permit for keeping the narcotic substance in his possession. On weighing with computerized weighing machine, the weight of the narcotic substance was found to be seven kilograms grams. Two samples of 100 grams each were separated and the same were converted into separate sealed parcels seal with seal 'HN'. The remaining case property weighing 6 kilograms and 800 grams was also put in the same bag and sealed with seal 'HN'. The seal after use was handed over to ASI Ram Kumar. All the parcels alongwith impression seal were taken into possession by the Investigating Officer vide separate recovery memo. An information was sent to the police station whereupon FIR under Section 15 of the NDPS Act was registered. Initial investigation was conducted by SI Har Narayan and thereafter investigation was conducted by ASI Ramesh Kumar. Accused was arrested. Accused alongwith the sample parcels and the case property was produced before the learned Judicial Magistrate Ist Class, Panipat on 29.6.2014. An application under Section 52-A of the NDPS Act was filed alongwith the inventory. The photograph of the case property was also taken. The learned Illaqa Magistrate verified the case property and after satisfying herself that the seals on it were intact, attested the inventory. The sealed sample parcels were deposited with MHC. One of the sealed sample parcels was sent to FSL, Madhuban for its chemical examination. The statements of witnesses were recorded under Section 161 Cr.P.C. On completion of investigation, report under Section 173 Cr.P.C. was filed in Court for trial of the accused."

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 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 ASI Jasmer Singh, PW-2 EHC Gulzar Singh, PW-4 SI Ramesh Kumar, PW-5 ASI Ram Kumar, PW-6 Santosh Kumar, Summary Clerk, PW-7 SI Har Narayan, Investigating Officer, PW-8 Joginder Rathee, Reader to Naib Tehsildar, PW-9 Constable Gurmit Singh and PW-10 Inspector/SHO Vipin Kadian.

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 and falsely implicated.

In defence, accused examined DW-1 Mamta Rani, DW-2 Parveen Manuja, DRK and DW-3 Constable Rajinder.

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 7 kgs. of poppy straw has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2014. He further contended that the appellant is poor person, first offender and only bread earner of the family. He further contended that accused-appellant has already undergone 7 months 4 days of

actual sentence.

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 28.07.2016 passed by learned Addl. Sessions Judge, Panipat, 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 first offender, poor person, only bread earner of the family and is suffering from long protracted criminal proceedings since 2014 i.e. for the last two years and further in view of the fact that appellant has already undergone actual sentence of 7 months 4 days out of the total sentence including remission and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 7 kgs. of poppy straw, 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.

Accordingly, present criminal appeal stands partly allowed.

Appellant Kiran Pal, who is in custody, be set at liberty

forthwith, if his custody is not required in connection with any other case,

subject to payment of fine, if already not paid. As argued, fine has already been deposited by the appellant.

December 02, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No