

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.S-4003-SB of 2015 (O&M)

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Date of decision:29.4.2016

Amit Kumar alias Monu

...Appellant

v.

State of Punjab

...Respondent

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Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Johan Kumar, Advocate for Mr. Rajpal Singh Chauhan,
Advocate for the appellant.

Mr. Arshdeep Singh Klar, Deputy Advocate General, Punjab
for the respondent-State.

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Inderjit Singh, J.

This appeal has been filed challenging the impugned judgment of conviction and order of sentence dated 21.8.2015 passed by learned Judge, Special Court, Rupnagar, whereby the accused has been held guilty and convicted for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act'). He has been sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹5,000/- and in default of payment of fine to further undergo simple imprisonment for six months.

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

At the time of arguments, learned counsel for the appellant has not argued anything regarding the conviction. Rather, he did not dispute the judgment of conviction of the appellant passed by the Judge, Special Court, Rupnagar. The learned counsel only prayed for reduction of sentence keeping in view the recovery from the accused-appellant.

The brief facts of the case as noted in the judgment of the learned Judge, Special Court, Rupnagar, are as under:-

“Briefly stated the prosecution story is that on 29.3.2014 police party headed by SI Balvir Singh in connection with checking on private vehicles reached near Lal Tanki. It was about 6 pm. One clean shaven boy was sitting in the shelter of Lal Tanki. One polythene bag was lying in front on him. On noticing the police party when the said person tried to immediately get up and run away then the police party apprehended him. On being disclosed the said person disclosed his name as Amit Kumar @ Montu s/o Kamaljit Singh religion Kashyap Rajput r/o H.No.25E Inner Nangal. The polythene bag which was lying upon in front of him was searched and the poppy husk was recovered from the same regarding which aforesaid Amit Kumar could not produce any permit or medical prescription or any licence. From the recovered poppy husk two samples of 100 gram each were drawn. The remaining poppy husk on weighing came to 3 Kg. 800 grams. The sample parcels of 100 gram each and

one bulk parcel containing 3 kg. 800 grams was prepared. All the parcels were sealed by SI Balvir Singh bearing impression "BS". Sample seal was separately prepared. The glass which was lying in the poppy husk along with three parcels and sample seal were taken into police possession vide recovery memo duly attested by the witnesses. Seal after use was handed to ASI Mohinder Pal. The accused Amit Kumar by keeping in his possession 4 kg. of poppy husk has committed an offence punishable under Section 16, 61, 85 of NDPS Act. Thus ASI sent ruqa through HC Joga Singh to the police station and got the FIR registered. The information to the higher officers was issued on wireless through control room. The accused was arrested vide arrest memo. Personal search memo of accused was prepared. The site plan was prepared. On return to the police station the accused along with case property duly sealed and Form No.29 were produced before SHO/Inspector Satish Kumar who on verification found the facts correct and further sealed the case property and sample seal. The case property, sample seal and Form No.29 was deposited with the MHC of the police station. On next date i.e. 30.3.2014 A.S.I. Balvir Singh produced the accused along with the case property before Illaqa Magistrate where inventory was got attested. On receipt of the report of Chemical Examiner and on completion of further

investigation formalities, challan against the accused was presented.”

After the completion of the investigation challan was presented. On presentation of the challan, the trial Court finding *prima facie* case against the accused-appellant framed charge for the offence under Section 15 of the Act, to which the accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW-1 Balbir Singh, PW-2 GHC Joga Singh, PW-3 ASI Mohinder Pal, PW-4 Satish Kumar, PW-5 MHC Gurnam Singh, besides Addl. PP for the State gave up PW HC Keshav Kumar being unnecessary and thereafter closed the prosecution evidence.

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

After going through the evidence on record, the learned trial Court vide impugned judgment and order convicted and sentenced the accused-appellant as stated above.

A perusal of the impugned judgment and order passed by the the learned Judge, Special Court, Rupnagar, shows that the prosecution has proved the recovery of 4 Kgs. of poppy husk from the accused/appellant beyond any reasonable doubt. The PWs have consistently deposed. The mandatory provisions have been complied with and the link evidence is complete. Therefore, the learned Judge, Special Court has

correctly convicted and sentenced the appellant for the offence under Section 15 of the Act. Otherwise also, nothing has been argued by the learned counsel for the appellant qua the conviction nor anything has been shown as to which finding has been given incorrectly by the Judge, Special Court, Rupnagar. Therefore, the conviction of the appellant is upheld.

As regards the quantum of sentence, I find that only four kgs. poppy husk has been recovered and the appellant has already undergone two months and 23 days sentence out of the actual sentence. It has been argued that the appellant is a poor person, only bread earner of his family and is the first offender.

Keeping in view the facts and circumstances of the present case and in view of the fact that the appellant is the only bread earner of his family, a poor person and suffering from the criminal trial for the last more than two years, therefore, the sentence of imprisonment of the appellant is reduced to already undergone, but subject to payment of fine. The appellant is directed to deposit the amount of fine within one month failing which the concerned Court will initiate proceedings as per law for recovery of fine.

As the sentence of imprisonment of the appellant was suspended and he was released on bail, therefore, his bail bonds and surety bonds shall stand discharged.

April 29, 2016.

(Inderjit Singh)
Judge

hsp