

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

**Crl. Appeal No.S-4724-SB of 2015 (O&M)
Date of Decision: September 08, 2016**

Gurbaksh Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.S.Bhinda, Advocate for
Mr.A.S.Cheema, Advocate
for the appellant.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 22.09.2015 passed by learned Judge, Special Court, Mansa, 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 ₹2,500/- and in default of payment of fine, to further undergo 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 Judge, Special Court, Mansa, are as under:-

“2. The material facts, as unfolded in the report under Section 173 Cr. P.C., fall within a narrow compass and are, herein given:

That, on 30.03.2013, ASI Nirbhai Singh, along with his

police companions, in connection with patrolling duty and checking of bad elements, was proceeding from village Boha towards village Hakamwala. When the police party was one kilometer, short of village Hakamwala, then, on the right side, towards the side of village Hakamwala, one person was spotted sitting while stirring his hands in the plastic bag. On seeing the police vehicle, the said person got perplexed and stood up. On suspicion, ASI Nirbhai Singh with the help of his companions, intercepted the said person, who, on inquiry, disclosed his name as "Gurbaksh Singh" and also disclosed his other particulars. The mouth of the plastic bag in possession of Gurbaksh Singh was open and poppy husk was visible in the same. Then, ASI Nirbhai Singh, had weighed the plastic bag, which came to be 20 Kgs. One sample of 100 grams of poppy husk was separated and the residue poppy husk, weighed to be 19 Kgs. 900 grams. Separate parcels of the sample and the residue poppy husk were prepared, which were sealed by ASI Nirbhai Singh, with his seal bearing impressions 'NS'. Sample seal was separately prepared. All the aforesaid articles were taken into possession, vide separate memo. Ruqa was sent to the Police Station, on the basis whereof, a case was registered against the accused under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985. Various other proceedings were conducted at the spot.

On return to the Police Station, ASI Nirbhai Singh had produced the accused and the case property before Inspector/SHO Baljit Singh, who verified the fact of recovery and counter-sealed the parcels 3 and the sample seal, with his seal bearing impressions 'BS' and retained the case property with himself.

During the course of investigation, sample parcel was sent to the office of the Chemical Examiner and the latter, vide its report, opined the sample to be "Chura Poppy Heads".

On completion of the investigation, the accused was sent up to face trial for the commission of an offence under Section 15 of the Narcotic Drugs & Psychotropic Substances Act, 1985 by the police of Police Station, Boha, District Mansa."

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

In support of its case, prosecution examined PW-1 Head

Constable Satnam Singh, PW-2 Head Constable Gurtej Singh, PW-3 ASI Nirbhai Singh, Investigating Officer and PW-4 Inspector Baljit Singh.

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 that he has been falsely implicated.

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 20 kgs. of poppy husk has been recovered from the accused-appellant, which falls under non-commercial quantity. The appellant is suffering from criminal proceedings since 2013. He further contended that the appellant is old person of 62 years, first offender and only bread earner of the family. He further contended that accused-appellant has already undergone actual sentence of about 6 months out of the total 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 on record, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 22.09.2015 passed by learned Judge, Special Judge, Mansa, is correct, as per law and does not require any interference from this Court.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is stated to be old person of 62 years, first offender, only bread earner of the family and is suffering from long protracted criminal proceedings since 2013 i.e. for the last about 3 years and further in view of the fact that appellant has already undergone actual sentence of about 6 months out of the total sentence as on 03.02.2016, the date when he was released after the sentence of the appellant was suspended during the pendency of the appeal on 22.01.2016 and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 20 kgs. of poppy husk, 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 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 Gurbaksh Singh is on bail, his bail/surety bonds stand discharged.

September 08, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No