

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

Crl. Appeal No.S-5019-SB of 2015 (O&M)
Date of Decision: July 26, 2016

Amarjit Singh alias Amri

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.G.S.Sandhu, 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 06.11.2015 passed by learned Judge, Special Court, Sri Muktsar Sahib, 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 ₹2,000/- and in default of payment of fine, to further undergo rigorous 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, Sri Muktsar Sahib, are as under:-

“2. The facts, as put forth by the prosecution, are to the effect that on 10.10.2013, a police party headed by ASI Gurlal Singh, was going in official Bolero from Mandi Killianwali to village

Killianwali, Lohara, Warring Khera etc. in connection with patrolling and checking of suspects. When the police party was going from village Lohara to Warring Khera through streets and reached near the house of Surat Singh, one person was seen coming from the opposite side carrying a plastic bag on his head, who was identified by HC Gamdoor Singh as he was previously known to him. On seeing the police party, he started walking briskly. He was chased by the police party but he managed to escape after throwing the plastic bag in the street. In the meantime, Gurtej Singh son of Harbans Singh came at the spot who was associated with the police party. Thereafter, in the presence of the witnesses, the IO conducted search of the bag which contained poppy-husk. One sample of 250 grams was taken from the bag and the remaining poppy husk was weighed which came out 16 Kgs 750 grams. The sample and the bag, containing the remaining poppy-husk, were converted into parcels, duly sealed, and taken into possession, vide a separate recovery memo Ex.P15. Specimen seal Ex.P4 was separately prepared and seal after use was handed over to HC Gamdoor Singh, a member of the police party. Ruqa Ex.P1 was sent to the police station on the basis of which formal FIR Ex.P2 was registered against the accused. Rough site plan Ex.P16 of the place of recovery was prepared. Statements of witnesses were recorded. On return to the police station, the entire case property was produced before ASI Tarlok Chand, SHO, who verified the investigation, and sealed the case property with seal bearing impressions 'TC' and took the case property in his possession vide memo Ex.P6. On the next day, the case property was produced in the court of learned Ilaqa Magistrate. On return to the police station, the case property was deposited with MHC Surjit Singh with seals intact. A detailed report Ex.P12 was sent to the Ilaqa DSP. On 10.12.2013, the accused was arrested and reasons for his arrest were disclosed to him, vide memo Ex.P17. On receipt of report of Chemical Examiner Ex.P14 and completion of necessary investigation, challan was presented against the accused in the Court.”

After necessary investigation, challan was presented against the accused-appellant. 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 ASI Tarlok Chand, PW-2 ASI Gurlal Singh, Investigating Officer, PW-3 ASI Gamdoor Singh, PW-4 Constable Karanvir Singh and PW-5 MHC Surjit 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.

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 17 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 is young aged person, first offender and only bread earner of the family. Accused-appellant has already undergone imprisonment of five months and twelve 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 appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned

State counsel and have gone through the record.

Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is 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 5 months and 12 days out of the total sentence and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 17 kgs. 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 sentence will 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 Amarjit Singh alias Amri is on bail, his bail/surety bonds stand discharged.

July 26, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No