

CRA-S-1426-SB-2004

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

CRA-S-1426-SB-2004

Date of Decision: January 6, 2016

Mangat Ram

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE NARESH KUMAR SANGHI

- 1. Whether Reporters of local papers may be allowed to see the judgment ? Yes*
- 2. To be referred to the Reporters or not ? Yes*
- 3. Whether the judgment should be reported in the Digest? Yes*

Present: Mrs.Anju Arora, Advocate,
Amicus curiae for the appellant.

Mr.R.S.Randhawa, Addl.A.G.Punjab.

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NARESH KUMAR SANGHI, J.(ORAL)

Challenge in the present appeal is to the judgment of conviction and order of sentence, dated 17.01.2004, passed by learned Judge, Special Court, Faridkot, whereby the appellant was held guilty for the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as the 'NDPS Act') and ordered to undergo rigorous imprisonment for seven years besides

payment of fine of ₹50,000/- (Rupees fifty thousand only) and in default thereof to undergo further rigorous imprisonment for one year for retaining 65 grams of smack without any permit or licence.

Learned Amicus Curiae, at the very outset, submits that in view of the cogent reasons recorded by learned trial Court, she will not propose to challenge the conviction of the appellant under Section 21 of the NDPS Act. However, she submits that in view of the fact that slightly above the small quantity of 50 grams, 65 grams of smack was recovered from the appellant and learned trial Court had awarded rigorous imprisonment for seven years besides payment of fine of ₹50,000/- (Rupees fifty thousand only), which is on higher side, therefore, substantive sentence of the appellant be reduced to rigorous imprisonment for three years, which he has already undergone. She further submits that the fine imposed is also disproportionate to the recovery effected from the appellant and, as such, the same be also reduced.

Learned counsel for the State has not controverted the fact that the appellant has already suffered incarceration for three years four months and twenty one days as per the affidavit, dated

22.08.2015, executed by the Superintendent, Central Jail, Ferozepur. He has produced the said affidavit, which is taken on record.

Learned counsel for the State fairly concedes that only 65 grams of smack was recovered from the appellant, which was slightly above the small quantity of 50 grams of smack. He further fairly concedes that the appellant was neither required nor involved in any other case and as per the affidavit furnished by the Superintendent, Central Jail, Ferozepur, he did not commit the jail offence during his incarceration.

Though learned counsel for the appellant has proposed not to argue the case on merit and confined her arguments with regard to quantum of sentence only, yet, to satisfy the conscience of this Court the entire material available on record has been re-scanned and it is found that learned Amicus Curiae has correctly proposed not to challenge the conviction of the appellant in view of the evidence led by the prosecution.

There appears to be substance in the alternative submission of the learned counsel for the appellant that the smack recovered from the appellant was slightly above the small

quantity of 50 grams. Appellant is neither required nor involved in any other case; during his incarceration he did not commit the jail offence and that he was released from the jail on 29.07.2006 and thereafter joined the main stream of the society and, as such, it will be harsh to send him to jail once again.

In view of the totality of the facts and circumstances of the case, the substantive sentence of the appellant is reduced to the rigorous imprisonment for three years. The fine is also reduced to ₹10,000/- (Rupees ten thousand only). However, in default of payment of fine, the appellant would undergo rigorous imprisonment for four months.

With the above modification in the order of sentence, the present appeal is partly allowed.

January 6, 2016
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(NARESH KUMAR SANGHI)
JUDGE