

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

CRA-S-1243-SB-2004

Date of decision:-11.12.2017

Vishal Kumar

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr. Jashandeep Singh, Advocate as
Legal Aid Counsel for the appellant.

Mr.Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

Accused Vishal Kumar was tried by learned Additional Sessions Judge, Jagadhri and vide judgment dated 10.3.2004, he was convicted for the offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**') and vide order dated 22.3.2004, he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of ₹5,000/- and in default thereof to further undergo rigorous imprisonment for a period of six months.

Briefly stated, the facts of the case as per prosecution story

are that on 10.3.2003, a police party headed by ASI Yash Pal, Incharge, Police Post Gandhi Nagar while being present near Sapra Cycle Store spotted the accused near a liquor vend carrying a bag in his hand; that the accused on seeing the police party threw the bag and ran away but he was apprehended; that the bag was searched as per rules and it was found to be containing 8 kgs. of poppy husk; that the Investigating Officer took out a sample of 200 gms. from the total and the sample as well as bag containing residue poppy husk were sealed. Accused was arrested in this case. Ruqa was sent to the police station, which formed basis for registration of formal FIR.

The Investigating Officer carried out the investigation, during the course of which sample parcel was sent to FSL, Madhuban from where report was received that it was of poppy husk. After completion of investigation and other formalities, he had been challaned. Copies of challan and other documents were supplied to the accused as required under Section 207 Cr.P.C. After framing of charge for the offence under Section 15 of the Act, the accused faced the trial during the course of which, the prosecution adduced evidence. Thereafter, statement of accused statement under Section 313 Cr.P.C. was recorded. The accused did not lead any evidence in defence.

After hearing arguments, learned trial Court vide judgment dated 10.3.2004 held the accused guilty and sentenced him vide order dated 22.3.2004.

Feeling dissatisfied with the said judgment of conviction and order of sentence, the accused has approached this Court by way of filing

of the present appeal, which came up for hearing on 21.8.2004 when it was admitted and vide order dated 27.9.2004 the sentence of the accused was suspended.

I have heard learned counsel for the appellant-accused-convict and learned Assistant Advocate General for the State of Haryana, besides going through the records.

At the very outset, learned counsel for the appellant states that he does not challenge the impugned judgment on the point of conviction but his prayer is only regarding the sentence part. He has stated that the appellant does not have any past criminal record; that he is a poor person and his family is dependent upon him for financial support; that he has already undergone seven months and five days out of the total sentence of two years.

As per the custody certificate filed by the State counsel, these facts stand corroborated.

After hearing the learned counsel for the appellant and going through the record, taking in view the quantity of the contraband recovered in the form of 8 kgs. of poppy husk, which is non-commercial quantity for which no minimum punishment is prescribed, previous antecedents of the accused, facts and circumstances explained by learned counsel for the appellant and that after being released on bail, he is not shown to have indulged in any criminal activity, I find that the ends of justice would be squarely met if the appellant is sentenced to imprisonment already undergone by him, while in custody in the present case. However, the sentence regarding the fine part is kept as intact.

Therefore, the impugned judgment is upheld as regards conviction part qua the appellant. However, as far sentence part is concerned, the same is modified and the appellant is sentenced to imprisonment already undergone by him as mentioned supra. However, the sentence regarding the fine part is kept as intact.

As such the appeal challenging the impugned judgment stand disposed of with above modification in sentence.

Necessary intimation be sent to the quarter concerned.

11.12.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes