

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

CRA-S-1702-SB-2004(O&M)

Date of Decision:24.11.2017

Parkash @ Om Parkash

.....Petitioner

V/S

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Bhag Singh, Advocate for the appellant.

Ms.Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

The challenge in this appeal is to the judgment of conviction and order of sentence dated 16.08.2004.

Counsel for the appellant, at the very outset, submits that he is not challenging the judgment of conviction dated 16.08.2004, vide which the appellant was convicted under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (for short “the NDPS Act”) on account of possessing 44 grams opium which is non-commercial quantity. However, counsel for the appellant submitted that the order of sentence awarding one year rigorous imprisonment and on payment of Rs.3,000/- as fine be reduced to the period already undergone by the appellant in view of following mitigating circumstances.

A. That the appellant has undergone 01 month and 08 days of actual sentence.

B. That the appellant is facing protracted trial since 2003 and is not involved in any other case.

C. That the appellant, during the pendency of the case, remained on bail since 2003 and he is not misusing the concession of bail.

D. That the appellant is suffering from severe medical disability and in pursuance of the order dated 14.11.2017, the appellant was directed to appear before the Civil Surgeon, Govt. Hospital, Panchkula on 20.11.2017 to obtain a certificate about his diabetic feet. Accordingly, he has produced a certificate dated 22.11.2017 issued by Civil Surgeon, Panchkula, which is taken on record as Mark-A and the relevant portion of the said certificate read as under:-

“This is to certify that Mr.Om Parkash son of Shri Telu Ram, Age 70 years old Male Registration No.1318 resident of Vill Batwal, Panchkula is a case of Amputation forefoot right & hind foot amputation left with ulcers. He is physically Disabled/Visual Disabled/Speech & Hearing Disabled and has 70% (seventy percent) permanent/temporary (physical impairment/Visual impairment/Speech & Hearing Impairment) in relation to his/her B/L Ankle.”

A copy of the said certificate is handed over to the counsel for the State.

E. Counsel for the petitioner further submits that the appellant is an old person aged about 70 years and has no criminal background. Counsel for the petitioner further placed reliance of this Court in the case of Tarsem Singh Vs. State of Punjab, 2017(2) R.C.R. (Criminal) 109 and in the case of Karamdeep Singh Vs. State of Punjab, R.C.R.(Criminal)174, wherein this Court has reduced the sentence considering the fact that the accused is a first offender and only bread earner of the family and has suffered a protracted trial for a long period and is not involved in any other NDPS case.

Learned State counsel has submitted a custody certificate of the appellant and according to the custody certificate, the appellant is undergone 01 month and 08 days of actual sentence and is not involved in any other NDPS Act. The appellant is on bail since 30.04.2003 and as per the medical certificate dated 22.11.2017, his right forefoot is amputated and he is suffering from

physical disability up to 70% which is permanent.

After hearing learned counsel for the parties, considering the fact that the appellant is aged about 70 years of age and is suffering from multiple medical problems as per disability certificate dated 22.11.2017 (Mark-A); he is not involved in any other case; he is facing protracted trial for the last about 17 years; he has undergone 01 month and 08 days of actual sentence and also in view of the fact that the he has not misused the concession of bail, this appeal is partly allowed, while upholding the conviction of the appellant, the sentence of 01 year rigorous imprisonment with fine of Rs.3,000/- awarded by the trial Court is reduced to the sentence already undergone by the appellant i.e. 01 month and 08 days. As per order dated 20.08.2004 passed by the trial Court granting interim bail to appellant, fine is already paid.

(ARVIND SINGH SANGWAN)
JUDGE

24.11.2017

Anjal

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No