

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1758-SB-2004 (O&M)

Date of decision: 08.12.2017.

Karnail Singh

... Appellant

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Swati Batra, Advocate, Amicus Curiae
for the appellant.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Challenge in this appeal is to the judgment of conviction dated 06.08.2004 passed by the trial Court, convicting the appellant under Section 15(b) of the Narcotic Drugs & Psychotropic Substances Act, 1985 and the order of sentence dated 07.08.2004, vide which the appellant was sentenced to undergo rigorous imprisonment for a period of 1½ years with a fine of Rs.1,000/-.

This appeal is pursued by Legal Aid Counsel appointed by the High Court Legal Services Authority.

As per custody certificate dated 23.11.2017, filed by learned State counsel, the appellant has already undergone 06 months and 28 days of actual sentence and he is not involved in any other case.

The brief facts of the case are that on 09.08.2002, ASI Janak Singh was present on Amritpur Kallan Yamuna Bandh on patrol duty and the appellant-accused was seen coming from one side carrying a plastic bag on his head. On seeing the police party, he tried to run away and on suspicion, he was apprehended. Thereafter, ASI-Janak Singh served notice Ex.PD under Section 50 of the NDPS Act for giving option to be searched either before the

Gazetted Officer or a Magistrate. In reply, Ex. PD/1 accused reposed confidence in ASI Janak Singh and thereafter, on search of the plastic bag, poppy husk was found. Out of contraband, 250 grams was separated as a sample and the remaining, on weighment was found to be 19.500 Kgs. Both the sample and residue were sealed in separate parcels and thereafter, the recovery memo Ex.PE was prepared and an information Ex. PA was sent to the police station for registration of the case. Thereafter, a formal FIR Ex.PA/1 was recorded. On completion of the investigation, the report under Section 173 Cr.P.C. was submitted and charge under Section 15 of the NDPS was framed. Thereafter, the prosecution led its evidence and six prosecution witnesses were examined. The Investigating Officer, PW-6-ASI-Janak Singh deposed on the line of the investigation carried out at the spot and the recovery effected from the appellant. Similarly, the other witnesses were also deposed about sending the sample parcels to FSL and producing the accused before the SHO, PW-2 constable Krishan Kumar.

Learned counsel for the appellant submits that she does not intend to challenge the conviction of the appellant and prays that the sentence awarded by the trial Court may be reduced to already undergone by the appellant in view of the following mitigating circumstances:

- (a) That the appellant is a labourer and a poor person. He is not involved in any other case prior to registration of the FIR dated 09.08.2002 and subsequent, thereof, when the appellant was on bail during the trial as well as during the pendency of the present appeal.
- (b) That the appellant is the only bread earner of his family and nobody is their in his family to support of old ailing parents and four sisters. It is further submitted that the recovery from the appellant was of non-commercial quantity and the appellant is a first offender.
- (c) That the appellant has undergone substantive sentence of 06

months and 28 days of actual sentence, out of 1 ½ years awarded by the trial Court.

Learned counsel for the appellant has relied upon the judgment of 2017(2) R.C.R. (Criminal) 109, Tarsem Singh Vs. State of Punjab, wherein, it is held that where the recovery from the convict is non-commercial quantity; is not a previous convict and not involved in any other case, the sentence undergone by the appellant can be reduced to the sentence already undergone by the appellant. The relevant para of this judgment is reproduced as under:-

“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 2012 i.e. for the last about 4 years and further in view of the fact that appellant has already undergone actual sentence of 3 months and 29 days out of the total sentence as on 01.02.2016, the date when the sentence of the appellant was suspended during the pendency of the appeal and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 40 grams of smack, 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.

13. Accordingly, present criminal appeal stands partly allowed.

14. Since, appellant – Tarsem Singh is on bail, his bail/surety bonds stand discharges.”

In view of the fact that the learned counsel for the appellant has not challenged the conviction of the appellant and has prayed for reduction of sentence, considering the fact that the appellant is not a previous convict; he has already undergone the sentence more than 06 months; he has not misused the concession of bail during the intervening period after registration of the

FIR and he has faced the protracted trial for the last about 15 years and recovery is of non-commercial quantity; in view of the judgment of **Tarsem Singh's case**, the sentence awarded to the appellant is reduced to the sentence already undergone by the appellant.

With the aforesaid modification, this appeal is disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

08.12.2017
Hemlata

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