

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

CRA-S-2135-SB-2004 (O&M)

Date of decision: 05.12.2017

Nahra

... Appellant

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Deepshikha Chauhan, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Amandeep S. Gill, Sr. DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting aside the judgment dated 04.10.2004 vide which the appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short 'NDPS Act') and order of sentence dated 04.10.2004, vide which he was sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo R.I. for five months.

Brief facts of the case are that on 16.07.2001, SI Swaranjit Singh along with other police officials was present on Patiala-Samana main Road. A truck came from the side of Samana and stopped. One person, after getting down from the truck, threw away a gunny bag from the backside of the truck and on seeing the police party, he tried to slip away. On suspicion, he was nabbed. He told his name as Nahra son of Nand Singh, resident of Village Bijalpura. The

gunny bag was searched, after giving him an offer of search either before Gazetted Officer or Magistrate. DSP was called on the spot and thereafter on search, 20 kg 500 gram of poppy husk was recovered, out of which two samples of 250 grams each were separated and sealed in parcels and residues were also sealed. After completing the formalities, the appellant was arrested and the case property was deposited in the malkhana.

The prosecution in support of its evidence, examined PW1 HC Jagga Ram who deposed that he has deposited the case property with malkhana. PW2 SI Swaranjit Singh, Investigating Officer give all the details about the investigation and documents prepared on the spot Ex.P1 to Ex.P3 i.e. sample seal chit, bulk parcel and second sample parcel. Ex.PB consent statement of accused, Ex.PC recovery memo, Ex.PD personal search memo, ruqa Ex.PE, FIR Ex.PE/1, memo of arrest Ex.PG, application for production of the item before SDJM as Ex.PK and order of SDJM as Ex.PK/1 and report of Chemical Examiner as Ex.PL. PW3 Constable Tehal Singh was a formal witness of the aforesaid documents. PW5 HC Daljit Singh tendered his affidavit about submission of the sealed sample parcels in the office of Chemical Examiner. Thereafter, the statement of accused under Section 313 Cr.P.C. was recorded, in which he denied all the incriminating evidence and pleaded false implication.

The trial Court, vide its judgment dated 04.10.2004, held the appellant guilty of offence punishable under Section 15 (b) of NDPS Act and awarded him two years R.I. and fine of Rs.2,000/-.

This appeal is now being pursued through legal aid counsel appointed by the High Court Legal Services Committee. The appeal was admitted on 02.11.2004 and the appellant was released on bail.

As per custody certificate dated 21.11.2017, the appellant has undergone 03 months and 19 days of actual sentence out of two years R.I. and is not involved in any other case.

Learned counsel for the appellant, at the very outset, submits that she do not intend to contest the findings recording by the trial Court with regard to conviction of the appellant, however, has prayed that sentence of the appellant may be reduced to the period already undergone by him, in view of the following mitigating circumstances: -

- (i) The appellant is aged about 55 years.
- (ii) The appellant is not a previous convict.
- (iii) The appellant is not involved in any other case prior or subsequent to registration of the FIR.
- (iv) The appellant was on bail during pendency of the trial and never misused the concession.
- (v) During pendency of the appeal since 2004, the appellant has not misused the concession of bail.
- (vi) Appellant has faced agony of protracted trial since 2001.

Learned counsel for the appellant further submits that the appellant has already undergone 03 months and 19 days of actual sentence and he has responsibility of his family to support and is the sole bread-winner of his family. Counsel for the appellant has submitted that the appellant is facing the agony of protracted trial since 2001 and he will be face great hardship in case he is directed to undergo remaining sentence. Counsel for the appellant has relied upon **Tarsem Singh Vs. State of Punjab, 2017 (2) RCR (CrI.) 109**, wherein it has been held that even in the case under NDPS Act, where the convict has not

misused the concession of bail and the recovery is of non-commercial quantity, considering the conduct of convict, his sentence can be reduced.

On the other hand, learned State counsel on the basis of custody certificate dated 21.11.2017 has not disputed the fact that the appellant has undergone 03 months and 19 days of actual sentence and is not involved in any other case.

After hearing learned counsel for the parties, I find merit in the submissions made by learned counsel for the appellant. Since the appellant is aged about 55 years; has faced the agony of protracted trial since 2001; during the period he was on bail either before the trial Court or after filing of the present appeal in 2004, for the last about 16 years, he has not misused the concession of bail; he is not involved in any other case; he is a poor person and he has own family to support; the recovery from the appellant falls under the non-commercial quantity, the sentence awarded to the appellant is reduced to the period already undergone by him. The fine is already paid.

Accordingly, the present appeal is partly allowed. Since the appellant is on bail, his bail/surety bonds shall stand discharged.

[ARVIND SINGH SANGWAN]
JUDGE

05.12.2017

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Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No