

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

(Sr. No.339)

CRA-S-1080-SB-2005

Date of Decision:-April 27, 2017

Bhajan Singh @ Tota

.....Appellant

V/S

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present : Mr. V.K. Chaudhary, Advocate for the appellant.

Mr. D.S. Virk, DAG Punjab.

A.B. Chaudhari, J. (Oral)

Heard learned counsel for the rival parties.

Pursuant to the order dated April 19, 2017 made by this Court, learned Counsel for the State, on instructions from the Investigating Officer, makes a categorical statement that the appellant Bhajan Singh @ Tota is very much present in village Munda Pind, Tehsil Khadoor Sahib, District Tarn Taran.

Being aggrieved by the judgment and order dated May 26, 2005 passed by the Judge Special Court, Amritsar, by which the appellant-Bhajan Singh @ Tota was convicted for offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 and was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹1,00,000/- and in default of payment of fine to undergo further rigorous imprisonment for one year, the appeal was filed in this Court by the convict.

In support of the appeal, the learned counsel for the appellant vehemently argued that there was violation of Section 50 of NDPS Act

while making recovery of the alleged contraband. He submits that the prosecution did not lead credible evidence before the trial Court and, therefore, the trial Court made a mistake in convicting the appellant-Bhajan Singh @ Tota. In the alternative, he submitted that the quantity of contraband that was allegedly seized was 55 Kgs. of poppy husk which is a commercial quantity and this Court has already recorded in the order dated December 15, 2005 that only 5 kgs of poppy husk was in excess. The incident had taken place according to prosecution on November 05, 2003.

Learned counsel for the appellant further submitted that the appellant-Bhajan Singh @ Tota is aged about 80 years and there is no other offence registered against the appellant-Bhajan Singh @ Tota other than the one in question. He has already undergone the sentence of 02 years, 02 months and 11 days and, therefore, the sentence deserves to be reduced to the one already undergone by him.

Per contra, the learned State counsel supported the reasons recorded by the trial Court in the impugned judgment and order of conviction and sentence and submitted that the impugned judgment and order cannot be faltered as there is a proper appreciation of evidence made by the learned trial Judge and has rightly convicted the appellant-Bhajan Singh @ Tota. There is no reason to reduce the sentence as urged by learned counsel for the appellant. He, therefore, prayed for dismissal of the appeal.

I have heard learned counsel for the rival parties and have perused the reasons recorded by the learned trial Judge for recording the conviction.

At the outset, I find that the submissions made by learned counsel for the appellant cannot be accepted. The prosecution examined the

witnesses to show that the entire procedure contemplated under Section 50 of NDPS Act was strictly followed. I, therefore, confirm the finding of conviction under Section 15 of NDPS Act.

The next question is about the award of sentence. The learned trial Judge has awarded the sentence to undergo rigorous imprisonment for ten years and to pay a fine of ₹1,00,000/- and in default of payment of fine to undergo further rigorous imprisonment for one year. It is not in dispute that the contraband that was seized was 55 Kgs. poppy husk i.e. just 5 Kgs. above the non commercial quantity. It is not in dispute that the appellant does not have any other or similar case to his credit and the occurrence had taken place on November 05, 2003. It is also not in dispute, as found out by the concerned police officer, that the age of the appellant-Bhajan Singh @ Tota is 80 years and he is living in village Munda Pind, Tehsil Khadoor Sahib, District Tarn Taran and there is no other pending case against the appellant.

In my opinion, the mitigating circumstances for reduction of sentence are available in the instant appeal, which are as follows:-

1. That the quantity of the poppy husk was just 5 Kgs. above the non-commercial quantity i.e. marginal.
2. That the appellant does not have any other or similar case to his credit.
3. That the appellant is aged about 80 years by now and is living peacefully in village Munda Pind, Tehsil Khadoor Sahib, District Tarn Taran.
4. That the incident had taken place in the year 2003 and after a period of 14 years, the appellant cannot be pushed into jail again for serving

out the remaining sentence after so many years.

In that view of the matter, I make the following order:-

ORDER

1. CRA-S-1080-SB-2005 is partly allowed.
2. The impugned judgment dated May 26, 2005 passed by the Judge Special Court, Amritsar, by which the appellant-Bhajan Singh @ Tota was convicted for the offence under Section 15 of the NDPS Act is confirmed and the conviction is maintained.
3. However, the impugned order of sentence awarded by the trial Court by which the appellant has been sentenced to undergo rigorous imprisonment for ten years and to pay a fine of ₹1,00,000/- and in default of payment of fine to undergo further rigorous imprisonment for one year, is modified to the one which the appellant has already undergone namely 02 years, 02 months and 11 days. The sentence of fine is also set aside.
4. Disposed of.

April 27, 2017

Pankaj

**(A.B. Chaudhari)
Judge**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No