

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

Crl. Appeal No.S-2345-SB of 2009 (O&M)

Date of Decision: February 17, 2017

Parladh Singh

...Appellant

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Ms.Sumanjit Kaur, Advocate
for the appellant.

Mr.K.S.Aulakh, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Punjab, challenging the judgment of conviction and order of sentence dated 10.08.2009 passed by learned Judge, Special Court, Barnala, whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of ₹2,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of three months under Section 15 of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Barnala, are as under:-

“2. The facts as put-forth by the prosecution are to the effect that on 11.10.2005, ASI Harwinder Singh along with fellow police officials were patrolling in an official canter and they reached bus stand, Burj Fatehgarh. Bawa Singh met the police party and he was joined therein. Thereafter, the police party proceeded from village Burj to Maur Nabha. At about 10.00 a.m., the police party reached in the area of village Maur Nabha and they spotted that a motorcycle Hero Honda CBZ without registration number was parked under a banyan tree.

A gunny bag with open mouth was kept near the motorcycle. One person was holding the gunny bag and other person was folding its open end. A plastic tumbler was also lying near the gunny bag. On suspicion, the canter was stopped and the police party went towards the accused. Meanwhile, the person, who was folding the open end of the gunny bag slipped away towards the fields on seeing the police party. HC Gurpal Singh and PHG Charanjit Singh were sent to chase him. The other person was apprehended, who disclosed his identity as Parladh Singh, who also disclosed the name of his co-accused as Makhan Singh. The poppy husk was found in the gunny bag. Two samples weighing 250 grams each were separated and the remaining poppy husk weighed 35 kgs. Separate parcels of both the samples and bulk were prepared and sealed with the seal bearing impression 'HS'. The specimen seal was prepared and the seal was handed over to ASI Gurcharan Singh after use. The incriminating articles alongwith motorcycle were taken into possession. From the dickey of the motor-cycle, the registration certificate No.PB-31D-9330 in the name of Parladh Singh was recovered. Subsequently, Makhan Singh accused had surrendered in the court on 28.10.2015 and in pursuance of the production warrants, his arrest was effected on 07.11.2015.”

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined PW-1 Head Constable Inderjit Singh, PW-2 DSP Chuahar Singh, PW-3 Head Constable Gurpal Singh, PW-4 Head Constable Tarsem Singh, PW-5 Amarjit Singh, Clerk, PW-6 ASI Gurcharan Singh, PW-7 ASI Harwinder Singh, Investigating Officer.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded

himself as innocent and his false implication.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant did not dispute the findings regarding conviction and only prayed for reduction of sentence of the appellant. Learned counsel for the appellant contended that 35.5 kgs. of poppy husk has been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is suffering from criminal proceedings since 2005. He further contended that the appellant is first offender and only bread earner of the family. Learned counsel for the appellant next contended that appellant has already undergone 5 months 19 days as on 30.09.2016 and is still in custody in some other case.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. There is nothing on the record to show false implication of the accused in the present case. He next argued that PWs have consistently deposed regarding the recovery from the accused. Learned State counsel, therefore, argued that there being no merit, the present appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

In view of the evidence, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt.

Therefore, the judgment of conviction dated 10.08.2009 passed by learned

Judge, Special Court, Barnala, is correct, as per law and does not require

any interference from this Court.

As per custody certificate dated 30.09.2016, the appellant had undergone 5 months and 19 days of actual sentence since 25.01.2014 but as per order dated 04.05.2016 of this Court, the appellant has re-entered the jail as undertrial on 06.12.2015, after registration of another FIR and the interim bail granted by this Court vide order dated 20.01.2015 was treated to have been vacated automatically. Therefore, as the appellant is in custody in another case, his custody period is also be counted in the present case from the date of his re-entering in jail.

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 2005 i.e. for the last about 12 years and further in view of the fact that appellant has already undergone substantial period of sentence out of the total sentence and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 35.5 kgs. of poppy husk, 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.

Accordingly, present criminal appeal stands partly allowed.

Appellant Parladh Singh, who is in custody, be set at liberty forthwith, if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

February 17, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No