

CRA-S-1842-SB-2005

[1]

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

(Sr. No.346)

CRA-S-1842-SB-2005

Date of Decision:-April 28, 2017

Narain

.....Appellant

V/S

State of Haryana

.....Respondent

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

Present : None for the appellant.

Mr. Arjun Singh Yadav, AAG Haryana.

A.B. Chaudhari, J. (Oral)

None for the appellant-Narain.

Learned counsel for the State submits that the counsel for the appellant Mr. Pankaj Nanhera has joined the judicial service. Statement is accepted. There is no need to issue notice to the appellant as the appeal is being disposed of finally.

Being aggrieved by the judgment dated September 03, 2005 and order of conviction dated September 05, 2005 passed by the Judge Special Court, Panipat, by which the appellant-Narain was convicted for offence under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 and was sentenced to undergo rigorous imprisonment for four years and to pay fine of ₹25,000/- and in default of payment of fine to undergo further rigorous imprisonment for four months, the present appeal was filed in this Court by the convict.

With the assistance of the learned counsel for the State Mr. Arjun Singh Yadav, AAG Haryana, I have perused the judgment and order of conviction and sentence dated September 05, 2005 passed by the Judge

Special Court, Panipat by which the appellant-Narain has been convicted and sentenced as aforesaid.

It is the case of the prosecution that on 19.12.2004, ASI Bhagat Singh while on patrolling duty saw a person coming from the side of Red Light having a bag in his hands and was apprehended on suspicion. Suspecting about the possession of contraband with him, the police officer gave option about search by Magistrate or Gazetted Officer. On his consent the police officer conducted search of the said bag and found out 840 grams of opium. It is not in dispute that the stipulated commercial quantity is 2.50 Kgs. The trial Court thereafter recorded the evidence and convicted the appellant-Narain, as aforesaid.

I have perused the impugned judgment and order of conviction and sentence and I find that there was compliance of Section 50 of the NDPS Act and no fault can be found out with the search carried out by the police and ultimate seizure of the contraband made by them from the bag which was held by the accused-Narain with him. Hence, I confirm the finding of conviction of the appellant for the aforesaid offence for which he was convicted.

The next question is about the award of sentence. The learned trial Judge has awarded the sentence of four years and to pay fine in the sum of Rs.25,000/- and in default of payment of fine to further undergo rigorous imprisonment for four months. As stated earlier, the incident had taken place on 19.12.2004. Learned counsel for the State fairly stated that there is no other case registered against the appellant-Narain of the similar nature. The appellant-Narain has already undergone the sentence of one year and two months and he was lodged in jail since 19.12.2004. The appellant-

Narain was granted bail by this Court vide order dated 28.11.2005.

In my opinion, looking to the quantity of the contraband namely 840 grams of opium that was seized from the appellant-Narain and looking to the further fact that there is no other offence against the appellant, and the offence in question related to the year 2004, it would be wholly improper to push the appellant-Narain in jail again after so many years, particularly because he has served out the sentence of 01 year and 02 months out of his total awarded sentence of 04 years. I am, therefore, inclined to modify the sentence awarded to the appellant but with a condition that the appellant-Narain shall pay further fine of ₹5,000/- in addition to ₹25,000/- awarded by the trial Court.

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

ORDER

1. Crl. A. No.1842-SB-2005 is partly allowed.
2. The impugned judgment and order of conviction dated September 03, 2005 passed by the Judge Special Court, Panipat under Section 18 of the NDPS Act is maintained.
3. The impugned order dated 05.09.2005 of awarding sentence of four years to the appellant-Narain is set side and modified to the one already undergone by him.
4. The appellant-Narain shall, however, pay a fine of ₹25,000/- (if not paid) awarded by the trial Court and in addition further fine of ₹5,000/- within a period of six months from today and in default of payment of fine, he shall undergo further sentence of one month.
5. Disposed of.

April 28, 2017

Pankaj

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

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No