

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

Criminal Appeal S-248-SB of 2005

Date of Decision: May 25, 2017

Sukhdev Singh @ Sukha

.....Appellant

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S.MANN

Present : Mr. S. S. Kharb, Advocate
as legal aid counsel for the appellant.

Mr. Vikram Bishnoi, Asstt. A.G., Punjab.

T.P.S.MANN, J. (Oral)

The appellant was tried for committing the offences punishable under Sections 4 and 5 of the Explosive Substances Act (hereinafter referred to as 'the Act'). Vide judgment and order dated 5.7.2004, learned Additional Sessions Judge (Adhoc) Amritsar acquitted him of the charge under Section 5 of the Act. However, he was convicted under Section 4(b) of the Act and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months. The period of detention already undergone by him during the

investigation and trial was ordered to be set-off against the substantive sentence as per the provisions of Section 428 Cr.P.C.

Aggrieved of his conviction and sentence, the appellant filed the present appeal, which was admitted on 4.2.2005 and simultaneously his sentence of imprisonment was suspended and he was ordered to be released on bail.

According to the prosecution, on 4.8.1999 at about 8.00 p.m., Inspector Jarnail Singh, ASI Lakha Singh and other police officials were present in connection with Nakabandi by the side of kacha path of the canal leading to village Hothian. There they saw a man coming by the side of the patri of the canal. On seeing the police party, he tried to turn back. However, on the basis of suspicion, he was apprehended by the police party. The hand bag held by him was searched, which led to recovery of RDX wrapped in a paper, one detonator and two meter wires. From the recovered RDX, 10 grams was taken out as sample whereas the remaining weighed 490 grams. As the appellant was not carrying any licence or permit to possess the explosive substances, FIR No. 215 of 1999 was registered at Police Station Sadar, Amritsar under Sections 4 and 5 of the Act.

Learned counsel for the appellant has not challenged the impugned judgment passed by the learned trial Court, whereby, he stood convicted under Section 4(b) of the Act.

However, it is submitted that the appellant is a first offender and facing the agony of criminal prosecution for the last about eighteen years. Out of the sentence of seven years imposed upon him, he has already undergone a period of about 5½ years. Prayer has, accordingly, been made for taking a lenient view in the matter of his sentence of imprisonment.

Learned State counsel has opposed the prayer by submitting that the appellant does not deserve any leniency as he was found to be carrying explosive substances and, that too, without having any licence or permit to carry the same. The recovered substances could have been used by him for causing explosives.

As per the custody certificate dated 20.8.2004, which stood appended with the appeal as Annexure A-1, the appellant had undergone total custody period of five years and fourteen days as on 20.8.2004. Even, thereafter, the appellant remained in custody before he was released on bail pursuant to the order passed by this Court on 4.2.2005. Thus, in all, the appellant has undergone 5½ years out of the sentence of seven years imposed upon him.

Taking into consideration the totality of the circumstances, this Court is of the view that no useful purpose will be served by sending the appellant behind the bars, once again,

for undergoing his remaining sentence of imprisonment. Ends of justice shall be suitably met, if his sentence of imprisonment is reduced to the one already undergone by him.

Resultantly, the conviction of the appellant under Section 4(b) of the Explosive Substances Act is upheld and his sentence of imprisonment is reduced to the one already undergone by him. The sentence of fine alongwith its default clause is maintained.

The appeal is, accordingly, disposed of.

May 25, 2017
amit rana

(T.P.S. MANN)
JUDGE

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