

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

Crl. A. No. 294-SB of 2005

DATE OF DECISION : 23.09.2017

Sahib Singh

.... APPELLANT

Versus

State of Punjab

.... RESPONDENT

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : None for the appellant.

Mr. Jagmohan Ghuman, DAG, Punjab.

* * *

AVNEESH JHINGAN, J. (Oral)

Appellant had faced trial in FIR No. 216 dated 14.09.2002 registered at Police Station Chheharta, District Amritsar, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act').

The trial court vide judgment and order dated 03.02.2004 convicted the appellant for commission of an offence punishable under Section 18 of the Act, and sentenced to undergo rigorous imprisonment for five years and to pay a fine of ₹ 50,000/-, in default of payment of fine, to further undergo rigorous imprisonment for six months.

The facts of the prosecution case, as noted by learned Special Judge, Amritsar, in the impugned judgment, are as under :-

“On 14.09.2002 S.I. Inderjit Singh of C.I.A. Staff, Amritsar, along with Gurbinder Singh and other police officials, was present near Baser Ke Bhaini in connection with naka bandi. A person was seen coming from the side of village Baser Ke on a scooter. He was signalled to stop, who on seeing the police party got perplexed and was apprehended on suspicion. On enquiry he told his name as Sahib Singh (the present accused). Accused was told by S.I. Inderjit Singh that he was suspected of having some narcotic in his possession and his search was to be conducted. Accused was also asked by S.I. Inderjit Singh that if he wanted his person to be searched before him or before a Magistrate of a gazetted officer. Accused opted to have his person searched in the presence of a gazetted officer. A memo was accordingly prepared. Ashwani Kapur, DSP (R) was requested on telephone to reach the spot. S.I. Inderjit Singh tried to join some independent witness with the police party but none was ready to join with police party. Ashwani Kapur, DSP reached after about half an hour and he disclosed his identity to the accused as a police gazetted officer. He also told the accused that he had a right to get his person searched before him or in the presence of a Magistrate or another gazetted officer. Accused opted to have his personal search in the presence of said DSP. Under the directions of said DSP

Inderjit Singh S.I. conducted the search of the person of the accused. From the right side pocket of the pants worn by the accused opium wrapped in a glazed paper was recovered. From the back side pocket of the pant cash amounting to ₹ 300/- was also recovered. Out of opium a sample weighing 10 grams was separated. Remainder weighed 990 grams. The sample and the remainder were made two separate parcels which were sealed by S.I Inderjit Singh with his seal bearing impression 'IS' and DSP Ashwani Kapur also affixed his seal bearing impression 'AK'. Sample seal was separately prepared. Sample, remainder and sample seal along with cash amounting to ₹ 300/- were taken into police possession vide memo of recovery. Seal after use was handed over by S.I. Inderjit Singh to HC Gurvinder Singh, whereas DSP retained his seal with himself. Vespa Scooter bearing registration No. PB-02 L-2425 in the name of Randhir Singh was taken into police possession vide a separate recovery memo. Accused was formally arrested. On return to the police station the case property, sample, sample seal were deposited with the S.H.O. P.S. Chheharta, who kept the case property in double lock. On 15.9.02 accused along with the case property was produced before the Area Magistrate. On 19.9.2002, sample seal was sent to the Assistant Chemical Examiner,

Punjab, Chandigarh for analysis through C. Surmail Singh, who deposited it there and handed over the receipt to S.I. Gurdev Singh.”

On receipt of the report from the Chemical Examiner, Punjab, Chandigarh, and on completion of other formalities, report under Section 173 (2) Cr.P.C was prepared and was placed before the trial court.

On appearance of the accused-appellant, provisions of Section 207 Cr.P.C were complied with. He was charged with the offence under Section 18 of the Act, to which he did not plead guilty and claimed trial.

In support of its case, the prosecution examined Inderjit Singh S.I. as PW.1, Gurmain Singh Constable as PW.2, Ashwani Kapur DSP as PW.3, Kulwant Kaur as PW.4 and Gurdev Singh SI as PW.5.

On close of the prosecution evidence, all the incriminating circumstances brought on record by the prosecution when put to the accused-appellant in his examination under Section 313 Cr.P.C., he denied correctness of the evidence, pleaded his innocence and false implication.

No witness was examined in defence.

No one has appeared on behalf of the appellant. The grounds of appeal have been perused. No evidence was produced by the appellant during trial. Even in the grounds of appeal, no substantial material has been relied upon basing on which the conviction could be challenged. The recovery of 1 Kg. of opium has not been disputed by the appellant. The grounds of appeal raised by the appellant are general in nature, raising no

specific substantial issue. No enmity has been pleaded or proved for false implication.

On the other hand, learned Deputy Advocate General, appearing on behalf of the State of Punjab, argued that case of the prosecution has been duly proved by PWs. There is nothing on record to show that implication of the appellant was false. He argued that PWs have consistently deposed regarding recovery of opium from the appellant. He contended that there is no merit in this appeal and it should be dismissed.

I have heard learned State counsel and have gone through the record.

In view of the evidence available on record, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 03.02.2004 passed by the trial court does not require any interference from this court. Be that as it may, the quantity of opium recovered is non-commercial quantity. The appellant has already undergone two and half years of imprisonment. It was his first offence.

With regard to sentence, this court in *Mahabir Vs. State of Haryana*, 1997 (3) RCR 649, keeping in view the delay in trial, reduced the sentence to the period already undergone.

In *Balvinder Singh Vs. State of Haryana*, 2012 (2) RCR (Criminal) 458, this court held that if the contraband recovered from the accused does not fall within the definition of commercial quantity, the ends

of justice would be met if the substantive sentence of imprisonment be reduced to that already undergone by him.

Even, the Hon'ble Apex Court in *Mukesh Vs. State of M.P.*, 2014 (16) SCC 571 had reduced the sentence to already undergone.

The facts of the present case indicate that recovery of the contraband was effected from the appellant about 15 years ago. Thus, the appellant has already suffered the agony of protracted trial, spanning over a period of one and half decade. It was his first offence. He has already served two and half years of imprisonment out of five years. He is on bail since 2005, no other offence committed by him has been brought on record. Keeping in view these facts, coupled with the fact that the appellant has a small child and he is the only bread earner of the family, and the opium recovered from his possession is of non-commercial quantity, the sentence imposed upon him is reduced to the period already undergone by him. However, the sentence of fine and in default thereof shall remain the same.

Accordingly, the present appeal is partly allowed. If the fine has not been deposited, same be deposited within a period of three months with Chief Judicial Magistrate, Amritsar, from the date of receipt of certified copy of this order. On his depositing the fine, his bail bonds shall be released.

September 23, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes