

306.

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

CRA-S-173-SB-2016

Date of decision:11.11.2017.

PARVEEN KUMAR

... Appellant

versus

STATE OF PUNJAB

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Rajeev Sharma, Advocate,
for the appellant-legal aid counsel.

Mr. Ajay Pal Singh Gill, DAG, Punjab.

HARI PAL VERMA, J. (Oral)

Appellant-Parveen Kumar has filed the present appeal against the judgment of conviction dated 17.07.2015 and order of sentence dated 20.07.2015 passed by learned Special Court, Pathankot, whereby he was convicted for the commission of offence punishable under Section 22(b) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (for short, the NDPS Act) and vide separate order, he was sentenced to undergo rigorous imprisonment for a period of one and half years and to pay a fine of ₹5,000/-. In default of payment of fine, he was further sentenced to undergo rigorous imprisonment for one month.

Briefly stated, FIR No.57 dated 18.08.2013 under Sections

Police Station Division No.1, Pathankot with the allegations that on 18.08.2013, the police party headed by ASI Rakesh Kumar nabbed the appellant in the area of Shani Mandir, Pathankot when he took out a packet from his pocket and while noticing the police party, he tried to throw it. On search of the polythene bag, 200 grams of intoxicant powder was recovered. Two samples each of 10 grams were separated into two parcels and the residue contraband was put into the third one. The parcels were sealed by ASI Rakesh Kumar with his seal mark RK. He prepared sample Ex.P1 of his seal on form Ex.PX. Seal after use was handed over to HC Baljit Singh. Seizure memo Ex.PW1/A was prepared. Ruqa Ex.PW5/A was sent to the police station which led to registration of FIR Ex.PW5/B under Section 21/22 of NDPS Act. Personal search memo Ex.PW1/C and site plan Ex.PW5/C were also prepared at the spot.

After completion of investigation, challan was presented in the Court. The copies of challan as envisaged under Section 207 Cr.PC were supplied to the accused free of costs. On finding a prima-facie case, the appellant-accused was charge sheeted for commission of offence punishable under Section 22(b) of the NDPS Act, to which he did not plead guilty and claimed trial.

After recording the evidence and hearing the parties, learned trial Court vide judgment dated 17.07.2015 convicted the appellant for commission of offence under Section 22(b) of the NDPS Act and vide separate order dated 20.07.2015, he was sentenced, as

indicated above.

It is in these circumstances, the appellant has approached this Court by way of present appeal.

At the outset, learned legal aid counsel for the appellant has not challenged conviction of the appellant and has confined his arguments qua the quantum of sentence only. He has contended that the recovery is of 200 grams of intoxicant powder containing Dextropropoxyphene psychotropic substance, which falls under non-commercial category. He has further contended that as against the awarded sentence of 1½ years, the appellant has already remained in custody for 1 year and 3 months.

He has further contended that the appellant has been suffering the agony of criminal proceedings since 18.08.2013 i.e. the date when the FIR in question was registered against him. The appellant is a first time offender and there is no other case against him under the Act. Thus, he has prayed that the sentence awarded to the appellant may be reduced to the period already undergone by him. In support of his contention, he has relied upon the judgment passed by Hon'ble Apex Court in **Rappai Versus State of Kerala-2015(2) DC (Narcotics) 389.**

On the other hand, learned State counsel while making reference to the custody certificate dated 17.02.2016 issued by Deputy Superintendent, Sub Jail, Pathankot, does not dispute the custody and fairly states that as per the custody certificate, there is no other case

against the appellant. However, on quantum of sentence, he has argued that the learned trial Court has already shown magnanimity and has awarded appropriate sentence to the appellant which does not warrant any interference by this Court.

I have heard learned counsel for the parties.

On perusal of the judgment passed by learned trial Court, this Court is of the considered view that the trial Court has rightly appreciated the evidence on record while holding the appellant guilty for commission of offence under Section 22(b) of the NDPS Act. There is no illegality or perversity in the findings given by learned trial Court which may warrant any interference of this Court. Even otherwise, learned counsel for the appellant has not assailed the judgment of conviction and has, rather, restricted his arguments qua the quantum of sentence only. The conviction of the appellant is, therefore, affirmed.

So far as the issue on quantum of sentence is concerned, Hon'ble Apex Court in **Rappai's case** (*supra*) has reduced the sentence of appellant from two years to one year for commission of offence under Section 20B(ii)(b) of the NDPS Act for the recovery of 1100 grams of 'Ganja'. The relevant observations of the said judgment read as under:

“ 3. When the matter initially came up for hearing before us on 27th March, 2015, we had issued notice limited to the question of quantum of sentence awarded to the appellant. We have accordingly heard learned counsel for the parties at some length on that limited question. The quantity of Ganja seized from the appellant was said to be weighing

1100 grams only, which does not qualify to be called commercial quantity. There is no statutory minimum sentence prescribed for the offence proved against the appellant who is a labourer by profession with no criminal antecedents. In the totality of these circumstances, we are inclined to reduce the sentence awarded to the appellant from imprisonment for a period of two years to one year only. We see no reason to interfere with the fine amount or the default sentence imposed by the courts below which shall stand affirmed.”

In the present case, admittedly, as against the awarded sentence of 1 year and 6 months, the appellant has already undergone imprisonment for 1 year and 3 months and no other case is pending against him. He has been facing the agony of criminal proceedings since 18.08.2013 i.e. the date when the FIR in question was registered against him. As per the search memo, 200 grams of intoxicant powder which contained Dextropropoxyphene psychotropic substance, was recovered from the appellant. The said quantity falls under non-commercial category. Since there is no statutory minimum sentence prescribed for the offence proved against the appellant and having recourse to the judgment passed by Hon'ble Apex Court in **Rappai's case (supra)**, this Court is inclined to modify the sentence awarded to the appellant from 1 year and 6 months to the period already undergone by him as appellant has already remained in custody for 1 year and 3 months.

Ordered accordingly.

However, there will be no change in the sentence of fine imposed by learned Special Court and the same shall be deposited by the appellant within one month from today. In case, he fails to deposit the same, the present appeal shall deemed to be dismissed.

With aforesaid modification in the order of sentence, the present appeal is dismissed.

(HARI PAL VERMA)
JUDGE

11.11.2017
sanjeev

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