

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRA-S-1122-SB of 2017 (O&M)

Date of Decision: 26.05.2017

Friank Moses

...Appellant

Vs.

U.T. of Chandigarh

...Respondent

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present:- Mr. Mohit Garg, Advocate  
for the appellant.

Mr. Sukant Gupta, Addl. Public Prosecutor,  
for the respondent.

**Amol Rattan Singh, J.(Oral)**

In terms of the order dated 24.04.2017, learned Addl. Public Prosecutor, U.T., Chandigarh, submits that the process for deportation of a foreign national is by admitting him to the transit camp at Amritsar (as regards foreign nationals in Punjab and Haryana), from where the embassy concerned, of the country to which the foreign national belongs, is contacted through the Ministry of External Affairs, and after the embassy agrees to accept the foreign national, he is released from the transit camp for deportation to his country of origin.

2. The present appeal has been filed by the appellant impugning the judgment of the learned Judge, Special Court, Chandigarh, convicting him for the commission of offences punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 14 of the Foreigners Act, 1946. He was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.3000/- for the commission of the offence

under the Act of 1985 and to undergo rigorous imprisonment for two years and to pay a like fine of Rs.3000/- for the commission of the offence punishable under the Act of 1946. In respect of both the offences, in default of payment of fine in each, he has to further undergo imprisonment for one month (in each case).

Both the substantive sentences were ordered to run concurrently and it was further ordered by the learned Special Court that upon completion of his sentence, the appellant-convict be deported to his native country, as per the relevant provisions and rules.

Thus, in other words, effectively upon completion of his sentence, he is not to be released from custody to be free in India, but is to be deported to his native country, which is stated to be Nigeria.

3. On 24.04.2017 learned counsel for the appellant had sought time to take instructions as to whether the appellant wishes to press the appeal against his conviction, or wishes to limit his prayer in the appeal to the question of the quantum of sentence alone.

4. Today, Mr. Garg, learned counsel for the appellant, submits that the appellant does not press the appeal on merits, i.e. he does not wish to contest his conviction for the commission of the aforesaid two offences, but restricts his plea to reduction of the sentence already undergone by him in respect of both the offences.

Hence, with the consent of both learned counsel, instead of taking up the application for suspension of sentence, the main appeal itself is taken on Board for final disposal.

5. Even though the conviction itself is no longer under challenge, a brief background leading up to the conviction of the appellant would need to

be given.

As per the case of the prosecution, SI Avtar Singh and some other police officials were present near the light point of Sector-31 and the Industrial Area, Phase-II, Chandigarh on 18.05.2016 at about 9:40 pm, on patrolling duty in their official vehicle bearing registration no.CH-01G1-6326. The vehicle was parked there with the SI and other police officials stated to be patrolling on foot. While they were going from behind the Shani Mandir towards the Tribune Chowk at about 9:40 pm, on the dividing road of the temple and the Gurudwara, they saw a person coming on foot from the side of the Tribune Chowk and on seeing the police party, he is stated to have got perplexed and started walking faster. On account of his suspicious moment, he was apprehended by the police party. He is stated to have immediately taken out a polythene packet from the right pocket of the jeans that he was wearing, and tried to throw it away. However, the SI is stated to have caught hold of his hand, and thereafter took the packet from him.

On opening the packet, it was found to be containing a powder smelling like heroin. On interrogation in English, by Constable Hitesh Kumar, the appellant disclosed his name as Friank Moses, son of Moses, resident of # 1722, Enug Street Lagos, Nigeria, presently resident of B/20, Block-712, Sector-21, Dwarka, Delhi.

Being a foreigner, he was asked to produce his documents but he could not produce either a passport or a visa, “within reasonable time”.

As per the version of the police party, passersby were asked to join investigation, but “everybody expressed his genuine difficulty and went away”.

6. Upon the recovered article being analyzed with a narcotic drug

detection kit, the result was stated to be positive, and therefore, with no licence or permit shown by the appellant for possession of smack (heroin), the powder was weighed on the spot and was found to be 30 grams. Two samples of 10 grams each were separated and put into polythene, which were kept in small plastic containers, which were then covered with cloth parcels and the seals 'AS' stamped on them. A sample seal is stated to have been separately prepared, alongwith a test memo.

The 'Foreign Branch' was stated to have been informed and thereafter the appellant taken to the police station, where an FIR was registered against him. A second Investigating Officer was also called upon, with SI Jasbir Singh of the Crime Branch coming to the spot.

7. Thereafter, upon completion of various formalities, which are not being gone into in detail in view of the challenge to the conviction itself having been given up, eventually the appellant was arraigned as an accused in the report submitted to the competent Court under Section 173 Cr.P.C., wherein offences under Section 21 of the NDPS Act and Section 14 of the Foreigners Act were made out against him.

Eventually, the trial Court having framed charges against the appellant under the aforesaid provisions, he was convicted on the basis of evidence led in the form of 8 prosecution witnesses, including the aforesaid two SIs, Avtar Singh and Jasbir Singh, and Dr. Sukhminder Kaur, Deputy Director, CFSL, as also documentary evidence in the form of 15 documents such as the report of the CFSL, the recovery memo and arrest memo etc.

8. The appellant in his statement under Section 313 Cr. P.C. denied the entire version of the prosecution, stating that the whole case was planted upon him and that he was picked up from Panipat and was shown to be

arrested at Chandigarh.

No witness was examined in his defence.

Eventually, upon appraisal of the evidence, the learned Judge of the Special Court, convicted and sentenced the appellant as described earlier.

9. In the aforesaid background, it is to be seen that the quantity of heroin found to have been recovered from the appellant was not commercial quantity, but was more than small quantity. The punishment provided in the statute for possession of such quantity is for a term upto 10 years, alongwith a fine which may extend to Rs.1,00,000/-. The trial Court thus convicted him to imprisonment for only one year, alongwith a fine of Rs.3000/-, in default of which he is to further undergo imprisonment for one month.

10. As regards the offence punishable under Section 14 of the Foreigners Act of 1946, again there is no minimum sentence stipulated, with the maximum sentence being upto a period of five years, in addition to a fine to be imposed.

As per the custody certificate filed in Court by Mr. Sukant Gupta, learned Additional Public Prosecutor, U.T., Chandigarh, the applicant-appellant had undergone imprisonment for one year and six days upto 25.05.2017, i.e. till yesterday. Thus, as regards the sentence imposed upon him for the commission of the offence punishable under the NDPS Act, he has already undergone the said sentence, and of the two year sentence imposed upon him (running concurrently), under Section 14 of the Foreigners Act of 1946, he has undergone marginally above half the sentence of two years.

11. Considering the aforesaid and the fact that the petitioner is not pressing the appeal qua his conviction by the learned trial Court, for either the commission of the offence punishable under Section 21 of the NDPS Act,

1985, or under Section 14 of the Foreigners Act, 1946, the appeal is allowed to the limited extent that the petitioner already having undergone the sentence imposed upon him after his conviction for an offence punishable under the NDPS Act, with there being no minimum punishment stipulated for the commission of the offence punishable under Section 14 of the Foreigners Act, 1946, the sentence imposed under that Act is reduced to the period already undergone by the appellant.

As regards the fines of Rs.3000/- imposed upon the appellant in respect of each of the aforesaid offences, considering the fact that he has been ordered to be deported from India upon completion of the sentence in each case, with that part of the sentence not being interfered by this Court, it is also considered appropriate, as per the prayer of learned counsel for the appellant, to reduce the fine to be paid, to Rs.1000/- for each offence and in default of payment of each, he would further undergo rigorous imprisonment of 15 days in respect of each default.

Thus, upon payment of the aforesaid fine, or undergoing the period of imprisonment for default thereof in each case, the petitioner shall be transferred to the transit camp at Amritsar, as submitted by the learned State counsel, as per rules, and thereafter deported to his native country, again as per procedure.

To make it absolutely clear, it is clarified that even on completion of his entire sentence as imposed hereinabove, the appellant shall not be released to be free in India, but shall be released from incarceration from prison and be taken as per procedure and rules to the transit camp, and deported from there, as per procedure, to his native country.

12. The appeal is consequently dismissed qua the conviction of the

appellant by the trial Court, for the commission of offences punishable under Section 21 of the NDPS Act, 1985 and Section 14 of the Foreigners Act, 1946, with the conviction in respect of both the offences upheld. However, as regards the quantum of sentence, the appeal is partly allowed as above.

26.05.2017  
D.B./RD

(AMOL RATTAN SINGH)  
JUDGE

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|-------------------------------|--------|
| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable?        | Yes/No |