

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CRA No. S-2572-SB of 2017 (O&M)

Date of Decision: 3.10.2017

Ravi Kumar

.....Appellant

versus

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice Arvind Singh Sangwan

Present: Mr.A.S.Cheema, Advocate for the applicant-appellant.
Mr.Amandeep Singh Gill, Senior Deputy Advocate
General, Punjab

Arvind Singh Sangwan, J.

Appellant had faced trial in FIR No. 84 dated 1.9.2013 registered at Police Station City Mansa under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the Act' for short). The trial Court vide judgment/order dated 11.7.2017 convicted the appellant for commission of offence punishable under Section 22 of the Act, and sentenced to undergo one year rigorous imprisonment and to pay a sum of ₹5000/- as fine and, in default of payment of fine, to further undergo rigorous imprisonment for a period of fifteen days. Hence, the present appeal by the accused-appellant.

As per the prosecution case, appellant was found in conscious possession of four vials of Rexcof syrup, 100 ml each, containing codeine phosphate and five strips (total 500 tablets) of Phinotil tablets containing Diphenoxylate Hydrochloride without any permit or

licence.

During the course of arguments, learned counsel for the appellant has not challenged the conviction of the appellant under Section 22 of the Act as ordered by the Trial Court but has submitted that the sentence qua imprisonment of the appellant be reduced to the period already undergone by him. Learned counsel for the appellant has further submitted that the appellant is a poor young person and is under serious disability of 40% blindness from both the eyes and is always escorted by his father during court proceedings and he is not a previous convict. In support of his arguments, learned counsel has relied upon the judgment in **Mukesh vs. State of M.P.** 2015(1)RCR(Criminal) 251 where in Hon'ble the Supreme Court has reduced the sentence to already undergone.

Learned counsel for the appellant has also placed reliance on the judgment of this Court in **Balvinder Singh vs. State of Haryana** 2012 (2) RCR(Criminal) 458, wherein it was held that the contraband recovered from the accused does not fall within the definition of commercial quantity and the ends of justice would be best met if the substantive sentence of imprisonment be reduced to that already undergone by him.

A perusal of the custody certificate of the appellant, placed on record reveals that the appellant has undergone about five months of actual sentence and is not involved in any other criminal case. Appellant has been facing criminal proceeding since the year 2013. Moreover, recovery of four vials of Rexcof syrup, 100 ml each, containing codeine phosphate and five strips (total 500 tablets) of Phinotil containing Diphenoxylate Hydrochloride effected from the possession of the accused

falls in the ambit of non-commercial quantity.

Keeping in view the submissions made by learned counsel for the appellant, it would be just and expedient to reduce the sentence qua imprisonment of the appellant to the period already undergone by him.

Accordingly, the conviction of the appellant under Section 22 of the Act is maintained. However, the sentence qua the imprisonment of the appellant is reduced to the period already undergone by him. Appellant-accused, who is in custody, be set at liberty forthwith, if not required in any other case, subject to deposit of fine, if not already deposited.

Appeal stands disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

October 03, 2017
arya

Whether speaking/reasoned: Yes

Whether Reportable: No