

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

Crl. Appeal No.S-4569-SB of 2016 (O&M)
Date of Decision: March 22, 2017

Ganga Singh

...Appellant

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Jastej Singh, Advocate
for the appellant.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against State of Haryana, challenging the judgment of conviction and order of sentence dated 06.09.2016 passed by learned Sessions Judge, Fatehabad (Exercising the powers of Special Judge under NDPS Act), whereby the appellant was held guilty and convicted and sentenced to undergo rigorous imprisonment for a period of four years and to pay fine of ₹5,000/- and in default of payment of fine, to undergo rigorous imprisonment for a period of six months under Section 15(b) of the NDPS Act.

The brief facts of the prosecution case as noted down in the judgment passed by learned Judge, Special Court, Fatehabad, are as under:-

“2.Briefly stated, the facts of the prosecution case are that on 20.04.2014, SI Tarsem Singh (hereinafter referred to as the 'Investigating Officer') along with HC Baljeet Singh, HC Mahender Singh and EASI Rajender Singh was present on Ratia turn G.T. Road, Fatehabad in connection with crime checking and patrol duty. In the meantime, a person having a

plastic bag on his head was seen turning towards Ratia road side. On seeing the police party, he turned back. On the basis of suspicion, the Investigating Officer along with accompanied police officials apprehended the said person. On enquiry, he disclosed his name as Ganga Singh son of Rup Singh, caste Majbi Sikh, resident of village Hakamwala, Police Station Boha, District Mansa (Punjab). SI Tarsem Singh suspecting some contraband in the said bag served a notice under section 50 of the NDPS Act upon the accused to the effect that search of the bag kept by him is to be conducted and if he so desired, the Gazetted Officer or the Magistrate can be called at the spot or he can be produced before one of them and search of the bag can be conducted in their presence. In reply to the notice, the accused reposed faith in the police party. Thereafter, search of the bag was conducted and Choora Post was found. Two samples of 100 grams each were separated from the recovered poppy husk and remainder was weighed and it was found to be 9.8 Kg. The samples and the plastic bag containing remainder Choora Post were converted into parcels and sealed with the seal of 'TS'. The seal after its use was handed over to HC Baljeet Singh. The residue parcel and sample parcels were taken into police possession vide separate seizure memo. Investigating Officer sent ruqa to the police station through EASI Rajender Singh on the basis of which, present case was registered. Statements of the witnesses under Section 161 Cr.P.C were recorded. Rough site plan of the place of occurrence was prepared. The accused was formally arrested. On return to the police station, the accused, the case property, witnesses and report under Section 55 of the NDPS Act were produced before Inspector Gaurav Sharma who verified the facts from the accused and the witnesses and affixed his seal 'GS' on all the parcels. On the next day i.e. 21.4.2014, the case property and the accused along with application under Section 52-A of the NDPS Act and inventory form were produced before the learned Ilqa Magistrate for verification of inventory and the Ilqa Magistrate had passed the order in this regard. After inventory, one sample parcel and residue parcel were deposited with the Judicial Malkhana and one sample parcel was deposited with the MHC for FSL. After usual investigations, the police found sufficient grounds to proceed against the accused and as such, a charge sheet was filed against him in the court to face trial.”

On presentation of challan against accused-appellant, copies of challan and other documents were supplied to him under Section 207 Cr.P.C. Finding prima facie case, the accused-appellant was charge-sheeted

claimed trial.

In support of its case, prosecution examined PW-1 Inspector Gaurav Sharma, PW-2 ASI Mahabir Singh, PW-3 Head Constable Jaivir Singh, PW-4 EASI Rajender Singh, PW-5 SI Tarsem Singh, Investigating Officer and PW-6 Head Constable Baljeet Singh.

At the close of prosecution evidence, the accused-appellant was examined under Section 313 Cr.P.C. He was confronted with the evidence of the prosecution and he denied the correctness of the evidence and pleaded himself as innocent and his false implication in the present case.

No witness was examined in defence.

The learned trial Court, after appreciation of the evidence, convicted and sentenced the accused-appellant as stated above.

At the time of arguments, learned counsel for the appellant prayed for reduction of sentence only. Learned counsel for the appellant contended that 10 kgs. of poppy husk been recovered from the accused-appellant, which falls under non-commercial quantity. He also contended that the appellant is suffering from criminal proceedings since 2014. He further contended that the appellant is poor person and only bread earner of the family. Learned counsel for the appellant next contended that appellant has already undergone 8 months and 24 days of actual sentence including remission.

On the other hand, learned State counsel argued that case of the prosecution has been duly proved by the PWs. There is nothing on the record to show false implication of the accused in the present case. He next argued that PWs have consistently deposed regarding the recovery from the

accused. Learned State counsel, therefore, argued that there being no merit,

the present appeal should be dismissed.

I have heard learned counsel for the appellant as well as learned State counsel and have gone through the record.

In view of the evidence, I find that the prosecution has duly proved its case by leading cogent evidence beyond reasonable doubt. Therefore, the judgment of conviction dated 06.09.2016 passed by learned Sessions Judge, Fatehabad, is correct, as per law and does not require any interference from this Court.

However, keeping in view the facts and circumstances of the present case and in view of the fact that appellant is stated to be a poor person, only bread earner of the family and is suffering from long protracted criminal proceedings since 2014 i.e. for the last about 3 years and further in view of the fact that appellant has already undergone actual sentence of 8 months and 24 days including remission of 1 month and keeping in view the fact the recovery from the accused-appellant falls under non-commercial quantity i.e. 10 kgs. poppy husk, the sentence imposed upon the appellant is reduced to the sentence already undergone by him. However, the sentence of fine and in default thereof, shall remain the same.

Accordingly, present criminal appeal stands partly allowed.

Appellant Ganga Singh, who is in custody, be set at liberty forthwith, if his custody is not required in connection with any other case, subject to payment of fine, if already not paid.

March 22, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No