

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

**Crl. Appeal - S – 816 – SB of 2016
Date of Decision:- 16.12.2017**

Naib Singh @ Naiba

....Appellant

Versus

State of Punjab

...Respondents

CORAM: HON'BLE MR.JUSTICE AVNEESH JHINGAN

Present: Mr. Rajiv Sharma, Advocate, for
Mr. B.S. Aulakh, Legal aid counsel.

Mr. N.K. Banka, DAG, Punjab.

AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed by the appellant against State of Punjab, challenging the judgment of conviction and order of sentence dated 13.01.2016 passed by learned Judge, Special Court, Mansa, whereby the appellant was held guilty under Section 15 of the N.D.P.S Act, 1985 and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.2500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of two months.

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

“That, on 09.08.2013, ASI Rajinder Singh, along with his police companions, in connection with patrolling duty and checking of bad elements, had proceeded towards villages Ralla, Bhupal, Makha Chehlan, etc. When the police party had reached near Baba Jogipeer Jhiri, then, amongst the trees,

existing on the bank of the road, one person was spotted, while putting something from the gunny bag into the lifafa with the help of tin box. On seeing the police vehicle, the said person got perplexed and tried to flee away. On suspicion, ASI Rajinder Singh, with the help of his companions, had intercepted the said person. On inquiry, he disclosed his name as “Naib Singh alias Naiba” and also disclosed his other particulars. He was brought to the spot where the gunny bag was lying on the ground. In the meanwhile, Amrik Singh, son of Gurtej Singh had come at the spot. He was apprised of the factual position and associated in the police party. ASI Rajinder Singh had told to Naib Singh alias Naiba that he suspects him to be carrying some narcotic substance in the gunny bag, on account of which, he intends to conduct his search and search of the gunny bag. He also apprised Naib Singh alias Naiba, that he has the option to get the search conducted, in the presence of Gazetted Officer or Magistrate, before whom, he can be taken. However, Naib Singh alias Naiba reposed confidence in ASI Rajinder Singh and expressed his desire to get the search conducted from him, upon which, consent memo was separately prepared. The mouth of gunny bag was open and poppy husk was visible in the same. One sample of 100 grams was separated and the residue poppy husk weighed to be 20 Kgs. Separate parcels of the sample and the residue poppy husk were prepared, which were sealed with the seal bearing impressions 'RS'. Sample seal was

separately prepared. Seal after use was handed over to H.C Ajaib Singh. Thereafter, all the aforesaid articles were taken into possession, vide separate memo. Ruqa was sent to the Police Station, on the basis whereof, case was registered against the accused. Various other proceedings were conducted at the spot.”

On presentation of challan against the 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 under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

In support of its case, prosecution examined Head Constable Ajaib Singh PW-1, ASI Rajinder Singh PW-2, Inspector Paramjit Singh PW-3 and Constable Mandeep Singh PW-4.

The accused while recording his statement under Section 313 Cr.P.C denied the allegations levelled against him and claimed himself to be innocent.

Learned trial Court after appreciating the evidence, vide its impugned judgment and order, convicted and sentenced the accused as stated above.

Aggrieved against the said judgment and order, the present appeal has been filed.

Learned counsel for the State produced custody certificate issued by Davinder Singh Randhawa, Superintendent District Prison, Mansa, dated 16.12.2017.

As per the said custody certificate , the appellant had

undergone 10 years, 11 months and 28 days including the remission earned of four years in case FIR No. 44, dated 20.8.2002, under Section 15 of the NDPS Act, Police Station Joga. He was released on 4.9.2017 in that case after completion of his sentence.

As per the afore-said certificate, he has undergone sentence of one month and 28 days in the present case. The note at the first page mentions that the convict was released on 5.9.2016 by the order of High Court, Chandigarh. From the custody certificate, it is evident that though he was released in this case on 5.9.2016, but he remained behind the bars upto 4.9.2017 in the other case referred to above.

At this stage, learned counsel for the appellant submitted that sentence of appellant be reduced to the period already undergone. The contention of learned counsel for the appellant deserves acceptance.

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 that case indicate that recovery of the contraband was effected from the appellant about 15 years ago. Thus, the appellant had already suffered

the agony of protracted trial, spanning over a period of one and half decade. It was his first offence. He had already served two and half years of imprisonment out of five years. He was on bail since 2005, no other offence committed by him had been brought on record.

In the present case, the appellant-accused is stated to be a daily wager and having a family consisting of bed ridden wife and eight daughters out of whom three were still un-married and dependent on him. Moreover, he has already undergone the sentence of 10 years, 11 months and 28 days including the remission period of four years in another case.

Keeping in view the aforesaid facts and the fact that in the present case, he has undergone one month and 28 days and 10 years, 11 months and 28 days in another case, the sentence imposed upon him is reduced to the period already undergone by him. His bail bonds be released on deposit of fine.

Accordingly, the present appeal is partly allowed and the sentence imposed on the appellant is reduced to the period already undergone by him. If the fine has not been deposited so far, same be deposited within a period of three months with Chief Judicial Magistrate/Duty Magistrate, Mansa, from the date of receipt of certified copy of this order. On his depositing the fine, the bail bonds of the appellant shall be released.

December 16, 2017
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(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No