

In the High Court of Punjab & Haryana at Chandigarh.

CRA-S-1603-SB-2004

Date of decision: 16.02.2018

Narinder Pal @ Babbu

..... Petitioner.

VS.

State of Haryana

..... Respondent.

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Swati Batra, Advocate as
amicus curiae, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN,J.(ORAL)

Prayer in this appeal is for setting aside the judgment of conviction dated 16.07.2004 vide which the appellant was convicted under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') for keeping in his possession non-commercial quantity of 260 grams of charas without any permit or licence as well as order of sentence dated 17.07.2004 vide which the appellant was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/-, in default of payment of fine, to further undergo rigorous imprisonment for six months.

Custody certificate filed in Court today is taken on record. As per the same, the appellant has undergone 07 months and 13 days of actual sentence out of two years' rigorous imprisonment awarded by the trial Court.

Brief facts of the case are that on 02.12.2002, the appellant was arrested by ASI Satpal Singh on receiving secret information that the appellant is selling charas in his residential house and finding the secret information to be reliable, ASI Satpal Singh alongwith co-officials went to the house of the appellant in Kurari Mohalla, Kalka. The appellant was found standing on the gate of the house and after issuing notice under Section 50 of the Act apprising the right of the appellant to be searched before the Gazetted Officer or a Magistrate, as he was having doubt of keeping some prohibited contraband in his house or in his personal custody, the accused opted to be searched before the Gazetted Officer. Thereafter, DSP Des Bandhu was called at the spot who reached in his official vehicle and in his presence, the personal search of the appellant was done and 260 grams of charas was recovered from the right pocket of the trouser of the appellant. Thereafter, two samples of 10 grams each were separated from the charas recovered from the appellant and were sealed and taken into police possession alongwith remaining charas as the accused could not produce any permit or licence. Thereafter, the *ruqqa* was prepared and was sent to the police Station for registration of the FIR and the same was registered in police Station Kalka by ASI Mohinder Singh. ASI Mohinder Singh, thereafter, completed all the formalities i.e. recording of statements of witnesses under Section 161 Cr.P.C., taking sealed parcels alongwith accused to police Station, putting seal of JS on the sealed parcels alongwith case property by the SHO and preparing the arrest memo of accused. Thereafter, the accused was produced before the Illaqa Magistrate by the police and case property was deposited in the Malkhana and later on it was sent to FSL for analysis. Thereafter, challan was presented and charge

under Section 20 of the Act was framed against the appellant/accused.

After recording the evidence of the prosecution and taking the documents on record, the trial Court held the appellant guilty of offence punishable under Section 20 of the Act and sentenced him to undergo two years rigorous imprisonment alongwith fine of Rs.5,000/-.

Counsel for the appellant, at the very outset, submits that she does not intend to challenge the appeal with regard to the conviction of the appellant, however, prays that the sentence awarded by the trial Court may be reduced to the sentence the appellant has already undergone in view of the fact that the appellant has faced the protracted trial since 2002 and he was on bail during trial and his sentence was suspended by this Court during the pendency of this appeal vide order dated 23.08.2004. It is further submitted that during the period the appellant was on bail as under-trial, as well as after filing of the appeal, he has not misused the concession of suspension of sentence as he is not involved in any other criminal case subsequent to FIR dated 02.12.2002 and as of now, period of more than 15 years has passed, the appellant has not repeated any such offence.

It is also stated that the appellant is the only bread earner of the family and he has to support his own family. He had clear antecedents prior to the registration of the FIR and he is the first offender. It is also submitted that in similar circumstances, this Court, in case **Tarsem Singh vs. State of Punjab, 2017 (2) R.C.R. (Criminal) 109** has reduced the sentence of the convict to already undergone by him as he was found in possession of non-commercial quantity and was the first offender. Operative part of the judgment is re-produced as under:-

“ *Keeping in view the facts and circumstances of the present case and in view of the fact that appellant is first*

offender, only bread earner of the family and is suffering from long protracted criminal proceedings since 2012 i.e. for the last about 4 years and further in view of the fact that appellant has already undergone actual sentence of 3 months and 29 days out of the total sentence as on 01.02.2016, the date when the sentence of the appellant was suspended during the pendency of the appeal and keeping in view that fact the recovery from the accused-appellant falls under noncommercial quantity i.e. 40 grams of smack, 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. The appellant is directed to pay the fine within one month from receiving the certified copy of the order, if already not paid, otherwise, the trial Court is directed to take necessary action as per law.

Accordingly, present criminal appeal stands partly allowed.

Since, appellant Tarsem Singh is on bail, his bail/surety bonds stand discharged.”

After hearing learned counsel for the parties, I find merit in the appeal qua the sentence awarded by the learned trial Court.

As per custody certificate, the appellant has already undergone 07 months and 13 days of actual sentence and is not involved in any other case. The appellant was on bail during trial and during the pendency of the present appeal and has never misused the concession of bail as it is apparent from the custody certificate that he is not involved in any other criminal case though 15 years have passed from the date of registration of FIR i.e. 02.12.2002.

The appellant is facing protracted trial since 2002 and is the

only bread earner of his family and he has wife and old mother alongwith minor children to support. Even prior to the registration of the FIR, the appellant was not involved in any other criminal case and as such, he is the first offender. This Court in *Tarsem Singh's* case (supra) has held that in case the recovery effected from the convict falls within the non-commercial quantity and he has undergone substantive sentence out of the total sentence awarded by the trial Court, the sentence imposed upon him can be reduced to the sentence already undergone by him.

In view of the same, the sentence imposed on the appellant i.e. two years' rigorous imprisonment is reduced to the sentence already undergone by him i.e. 07 months and 13 days. However, sentence of the fine and in default thereof, shall remain intact.

The appellant is directed to pay the fine within the period of four months from receiving the certified copy of this order, if already not paid, otherwise, trial Court is directed to take necessary action as per law.

Accordingly, the present appeal is partly allowed. Since, appellant Narinder Pal @ Babbu is on bail, his bail/surety bonds stand discharged.

16.02.2018
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No