

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

**Criminal Appeal No.1798-SB of 2004 (O&M)
Date of Decision: 17.12.2018**

Surinder Pal

..... Appellant

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Harpreet S. Rakhra, Advocate for the applicant/appellant.

Mr. Sandeep Kumar, Deputy Advocate General, Punjab
for the respondent/State.

MAHABIR SINGH SINDHU, J. (Oral)

The appellant has filed the present appeal against the impugned judgment of conviction and order of sentence dated 20.08.2004, passed by learned Special Judge, Hoshiarpur, vide which, he has been convicted and sentenced to undergo rigorous imprisonment for a period of two years, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*), along with fine of ₹ 5000/- with a default clause to further undergo rigorous imprisonment of three months.

Brief facts of the case are that prosecution in this case was initiated on the basis of Ruqa (Ex.PF), sent by the SHO/Inspector Iqbal Singh (PW-3). The allegations are that on 30.03.2001, when S.I. Iqbal Singh along with other police officials reached at Bharwai Chowk for patrolling, the appellant was apprehended on suspicion in the presence of DSP Lakhwinder Pal Singh. During search, contraband i.e. 420 gms. Opium, wrapped in glazed paper from the right pocket of the trouser, worn by the petitioner, was recovered from him. Formal FIR No.94 dated 30.03.2001, under Section 18 of the NDPS Act was registered at Police

Station Sadar, Hoshiarpur and after completion of investigation by the police, report under Section 173 Cr.P.C. was submitted before the Special Judge.

Learned trial Court framed the charges under Section 18 of the NDPS Act against the appellant, to which, he pleaded not guilty and claimed trial. Prosecution examined six witnesses and also placed on record the documentary evidence. The entire incriminating material was put to the appellant under Section 313 Cr.P.C., but he claimed innocence and stated that he has been falsely implicated in the present case. In defence, he has not led any evidence.

Learned trial Court, after considering the entire material available on record and hearing both sides, found the appellant guilty of the charges and sentenced under Section 18 of the NDPS Act for illegal possession of non-commercial contraband. Hence, the present appeal.

Custody Certificate of the applicant/appellant has been produced. The same is taken on record and perusal of the same reveals that the appellant has already undergone the actual sentence of more than nine months and he is not involved in any other criminal case.

At the outset, learned Counsel for the appellant does not want to challenge the conviction and confined his prayer only for the quantum of sentence.

It is contended that the appellant is facing criminal proceedings since 2001 and recovery is non-commercial. Out of total two years, he has already undergone actual sentence of 09 months and 26 days and during this period, the appellant has not committed any offence including under the NDPS Act. It is further contended that the appellant is sole bread earner and is the first offender. Also contended that he was released on interim bail by learned trial Court till

21.09.2004 and further granted the concession of bail by this Court, vide order dated 17.09.2004 and he never misused the concession of same. Now sending him again to the prison in the company of criminals is not justified at this stage.

On the other hand, learned State Counsel opposed the submissions made by learned Counsel for the appellant and prayed for dismissal of appeal.

Heard learned Counsel for both sides and perused the record.

The point for consideration in the present appeal is as to what should be the quantum of sentence, which may be imposed upon the appellant in view of the facts and circumstances of the present case and his conviction under Section 18 of the NDPS Act?

There is no doubt that offender is to be sentenced in commensurate to the offence(s) committed by him and punishment prescribed, but that is subject to the facts and circumstances of each case until and unless there is a statutory embargo for imposition of minimum sentence.

The appellant has been convicted under Section 18 of the NDPS Act and recovery of the contraband in the present case is less than commercial quantity.

There is no interdict for this Court to impose the minimum sentence on the appellant for the recovery in question, but at the same time, the provisions of the Act are very stringent, therefore, a balanced approach is to be adopted while imposing sentence in such type of case(s). Undisputedly, the prosecution against the appellant was initiated in the year 2001 and he has already undergone more than nine months' actual custody and is the first offender. The Custody Certificate reveals that he is not involved in any other case except the present one. Therefore, there is a presumption in favour of the appellant that he has tried

to reform himself and returned to the main stream of the Society as a law abiding citizen. The Courts are supposed to take into consideration the facts and circumstances of each case regarding the antecedents of the accused/convict while imposing the sentence and if this parameter is to be applied, then the same goes to in favour of the appellant. Even otherwise, at this stage, sending the appellant to undergo remaining part of the sentence in the company of criminals in the prison would be a counter productive instead of serving any purpose in a positive way.

Keeping in view the facts and circumstances, discussed hereinabove, this Court is of the opinion that ends of justice would be met in case the sentence, imposed upon the appellant, is reduced to the period, already undergone by him.

As a result thereof, the appeal is partly allowed and conviction of the appellant under Section 18 of the NDPS Act, imposed by learned trial Court duly, is upheld and his sentence is reduced to the period, already undergone by him. However, the fine and default clause thereof shall remain intact. The appellant is directed to pay the fine, if not paid within one month from receiving the certified copy of this order, otherwise learned trial Court is directed to take necessary action in accordance with law.

December 17, 2018

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(MAHABIR SINGH SINDHU)

JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>