

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

**Criminal Appeal No.S-1610-SB of 2005 (O&M)
Date of Decision: September 27, 2018**

Binder Singh

.....APPELLANT(s).

VERSUS

State of Haryana

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. G.S. Sidhu, Advocate
for the appellant (s).

Mr. Amrik Narwal, DAG Haryana.

SURINDER GUPTA, J.

Appellant has filed this appeal against the judgment of conviction dated 06.09.2005 and order on sentence dated 07.09.2015 passed by learned Additional Sessions Judge, Sirsa, whereby he was convicted for the offence punishable under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short-NDPS Act) and sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of ₹10,000/-.

As per case of the prosecution, appellant was apprehended by the police party headed by ASI Ami Lal of Police Station City Dabwali and 20 Kg of poppy-husk was recovered from his possession.

Learned counsel for the appellant has not challenged the conviction of the appellant on merits and has confined his submission only

for taking lenient view regarding quantum of sentence. He has argued that this case pertains to the year 2002. Appellant has faced the agony of trial for a long period of 16 years. He has also undergone sentence of 6 months 19 days out of 3 years awarded to him. The recovery from the appellant is of non-commercial quantity of contraband, as such, sentence awarded to him be reduced to the period of sentence already undergone by him.

Learned State counsel has argued that as per custody certificate, appellant was found involved in two other cases under NDPS Act even after registration of this case which shows that he is a habitual offender and does not deserve any leniency in the quantum of sentence awarded to him by the trial Court.

Perusal of custody certificate produced on file shows that appellant had undergone 6 months 19 days of sentence which include 5 months 19 days after conviction. He was also convicted in another case bearing FIR No.167 of 2003 registered at Police Station City Dabwali and was awarded sentence of rigorous imprisonment for six years. One more case under the NDPS Act against the appellant finds mentioned in custody certificate. It is also evident from the custody certificate that after the year 2003 till date i.e. for the last 15 years, appellant has not been found involved in any criminal case. He was a young man of 28 years of age at the time of registration of FIR in this case.

In view of the above facts and quantum of recovery of poppy-husk effected from appellant, I am of the opinion that sentence of rigorous imprisonment for 3 years awarded by the trial Court is on higher side.

Keeping in view the facts and circumstances of the case, awarding of

substantive sentence of rigorous imprisonment for one year will serve the ends of justice. Consequently, this appeal is partly accepted. Conviction of the appellant for the offence punishable under Section 15 of NDPS Act and sentence of fine awarded to him, is maintained while the sentence of rigorous imprisonment for three years is reduced to sentence of rigorous imprisonment for one year. Appellant, whose sentence was suspended vide order dated 20.02.2006, be taken into custody and sent to jail to undergo the remaining sentence.

Copy of this order be sent to Chief Judicial Magistrate, Sirsa for compliance.

September 27, 2018
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***