

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

CRA-S-426-SB-2005 (O&M)

Date of decision: 08.03.2018

Naresh Kumar

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. V.S.Punia, Advocate
for the appellant.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Challenge in this appeal is to the Judgment of conviction dated 16.02.2005 and order of sentence dated 18.02.2005 vide which, the appellant was held guilty of offence punishable under Section 18 (b) of the NDPS Act and was sentenced to undergo 03 years rigorous imprisonment and to pay a fine of Rs.20,000/-. In default of payment of fine, he was ordered to further undergo simple imprisonment for a period of six months.

Brief facts of the case are that on 23.09.2000, SI-Mahender Singh along with other police co-officials was present at Old Bus Stand, Ratia on patrol duty and the appellant-accused was standing in front of Punjab Medicos, carrying a bag in his hand. On suspicion, he was apprehended and on inquiry, he disclosed his name and identity. After giving a notice under Section 50 of the NDPS Act, i.e. offer to be searched before a Gazetted officer or a Magistrate, he gave his option to be searched

before a Gazetted officer and thereafter, Ram Kumar, DSP, Headquarter, Fatehabad was informed to reach at the spot and in his presence, the search was conducted and opium was recovered from the possession of the accused person. Thereafter, the Investigating Officer completed the investigation, sealed the contraband after preparing a sample seal parcel and sent a *ruqa* to the Police Station for registration of the FIR. On registration of the FIR, the accused was arrested and produced before the SHO to complete the formalities under Section 57 of the NDPS Act. The sample was sent to Chemical Examiner for analysis and on receiving the report, the challan under Section 173 Cr.P.C. was presented.

The prosecution, in support, examined six prosecution witnesses and thereafter, the trial Court convicted the appellant.

Learned counsel for the appellant has submitted that he does not want to challenge the conviction of the accused person and has prayed for reduction of sentence to the sentence already undergone by the appellant. It is submitted on behalf of the appellant that he has undergone 01 year, 08 months and 24 days of actual sentence, out of 03 years rigorous imprisonment and he is not involved in any other case. It is further submitted that the appellant was on bail during the trial and is on bail during the pendency of the present appeal since 2005 and during the intervening period of 13 years, he has joined the mainstream of the society and has not repeated offence. He further submitted that the appellant is a poor person, only bread earner of the family and has his old parents and his family to support. It is also submitted that the appellant has faced the protected trial since 2000, when the FIR was registered.

Learned counsel for the appellant has further submitted that in

the present case, the accused, after arrest, was never produced before the Illaqa Magistrate along with the case property and inventory and the case property including the sample parcels were sent to FSL after 17 days and in the meantime, the same remained in the possession of MHC and were never deposited in the judicial malkhana. It is also submitted that the recovery effected from the appellant is of non-commercial quantity and therefore, his sentence be reduced.

In reply, learned State counsel has filed the custody certificate dated 07.03.2018 in the Court and as per this certificate, the appellant is not involved in any other case and has undergone 01 year, 08 months and 24 days of actual sentence.

After hearing counsel for the parties, I find merit in the present appeal qua the sentence awarded to the appellant for the following reasons:-

- (a) The FIR pertains to the year 2000 and the appellant remained on bail during the trial and during the present appeal and he has joined the mainstream of society and is not involved in any other subsequent case, a fact not disputed by State counsel on the basis of his custody certificate.
- (b) A perusal of the case file shows that the appellant was never produced before the Magistrate after his arrest along with the case property or the inventory.
- (c) The appellant is facing the protected trial for the last about 18 years and as per his statement, he has to support his old parents and his family.
- (d) The recovery from the appellant is of non-commercial

quantity. In view of the judgments titled as ***Tarsem Singh vs. State of Punjab, 2017 (2) R.C.R. (Criminal) 109; Mangat Ram vs. State of Punjab, 2016 (5) R.C.R (Criminal) 316; Piara Ram vs. State of Haryana, 2016 (2) RCR (Criminal) 175 and Jogender Pal vs. State of Punjab 2012 (2) RCR (Criminal) 287***, wherein it has been held that in case of recovery of non-commercial quantity, the sentence can be reduced, if the accused is the first offender and is not involved in any other case, the sentence of the appellant can be reduced.

- (e) A perusal of custody certificate shows that he has undergone substantive sentence of 01 year, 08 months and 24 days, out of 03 years rigorous imprisonment and is a first offender.

In view of reasons recorded above, this appeal is partly allowed. The sentence awarded to the appellant is reduced to the period already undergone by him and the fine is reduced to Rs.5,000/-. The appellant shall pay the amount of fine within a period of 02 months from today, failing which, he will undergo imprisonment of 15 days. Since the appellant is on bail, his bail /surety bonds shall stand discharged.

With the aforesaid modifications, this appeal is disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

08.03.2018

Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No