

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

**CRA-S No.986-SB of 2005 (O&M)
Decided on: 11.05.2018**

Ram Lal

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Namit Sharma, Advocate
for the appellant.

Ms. Harpreet Kaur, AAG, Haryana.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this appeal is for setting-aside the judgment of conviction dated 13.04.2005 convicting the appellant for offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') as well as the order of sentence dated 13.04.2005 vide which the appellant was sentenced to undergo rigorous imprisonment for a period of 05 years and to pay a fine of Rs.50,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 03 months.

Brief facts of the case are that on 21.03.2001, FIR No.172 under Section 15 of the NDPS Act was registered against the appellant at Police Station City Panipat with the allegations that ASI Virender Singh along with his co-officials were on patrolling duty on the GT road, when a person was seen coming towards them carrying a suitcase in his right hand and on seeing the police party, he became perplexed by taking a U-turn and started walking fast and on suspicion,

he was apprehended. Since, the Investigating Officer was suspecting some narcotic in the bag, a notice under Section 50 of the NDPS Act was served on accused giving an offer to be searched before the Gazetted Officer or the Magistrate. On this, the accused opted to be searched before the Magistrate and thereafter, the DRO, Panipat was informed who reached at the spot and gave an order to conduct the search of the suitcase in which 10 Kgs poppy powder was recovered, out of which 250 gms. was separated and sealed as a sample parcel and the remaining contraband was also sealed and taken in possession vide recovery memo. Thereafter, a ruqa was sent to the Police Station and the FIR was registered. On return to the Police Station, the entire case property was deposited with the Moharir Head Constable and thereafter, in due course, the sample was sent to Forensic Science Laboratory, Madhuban and on receiving the report, the challan under Section 173 of the Code of Criminal Procedure (in short 'Cr.P.C.') was submitted.

The prosecution examined PW1 – ASI Ramesh Kumar, who deposed on the line of investigation carried out as stated in the FIR, PW2 – Badan Singh Rana, Inspector/SHO Police Station City Panipat, PW3 – Head Constable Brij Pal, PW4 – K.K. Amrohi D.R.O. and PW5 – ASI Ranbir Singh. The FSL report was tendered in the evidence of the prosecution.

After the conclusion of the evidence of prosecution, the statement of appellant/accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence which the prosecution produced against him was put to him to tender explanation for the same. The

appellant/accused denied the allegation of prosecution and pleaded his innocence. However, no defence evidence has been led by the appellant/accused.

The trial Court, after hearing learned counsel for the parties and after appreciating the evidence on record, convicted and sentenced the appellant-accused under Section 15 of the NDPS Act.

Feeling dissatisfied with the judgment of conviction and order of sentence dated 13.04.2005, the accused/appellant has preferred the present appeal, which was admitted on 27.05.2005.

Counsel for the appellant has argued that the prosecution has failed to join an independent witness and has also failed to follow the mandatory provision of Section 52(a) of the NDPS Act. It is also submitted that the case property was never produced before the Magistrate for verification of the seal or for drawing the representative sample and, therefore, the investigation carried out by ASI Ramesh Kumar is faulty. Counsel for the appellant has further submitted that the appellant is an old person aged about 50 years and has undergone 02 years, 03 months and 12 days of actual sentence out of 05 years rigorous imprisonment awarded by the trial Court and the FIR pertains to the year 2001 and the appellant was on bail during the pendency of the present revision petition and has never misused the concession of suspension of sentence. It is further submitted that the appellant is a poor person and has his own family to support and the appellant has faced the agony of protracted trial for a period of about 17 years, therefore, by taking a lenient view, the sentence awarded to the appellant be reduced to the period already undergone by him.

Counsel for the State has filed the Custody Certificate and as per the Custody Certificate, it is not disputed that the appellant has undergone 02 years, 03 months and 12 days of actual sentence. Counsel for the State has, however, submitted that the appellant was convicted in one another FIR i.e. FIR No.42 of 2002 under Section 15 of the NDPS Act registered at Police Station Bahrod, Alwar, Rajasthan and the High Court of Rajasthan in Criminal Miscellaneous No.1404 of 2003 has already reduced the sentence of the appellant vide judgment dated 25.02.2007.

In reply, counsel for the appellant has submitted that both the FIRs i.e. the present FIR and the second FIR, in which the appellant has undergone the sentence pertains to the year 2001 and 2002 and, thereafter, the appellant has reformed himself and subsequently, he is not involved in any other case and he has joined the mainstream of the society.

This fact is not disputed by counsel for the State that subsequent to the aforesaid 02 FIRs, the appellant is not involved in any other case for the last about 15 years.

After hearing the counsel for the parties, I uphold the judgment of conviction passed by the trial Court, however, considering the fact that the appellant has faced the agony of protracted trial for a period of about 17 years; the appellant has undergone 02 years, 03 months and 12 days of actual sentence and has undergone the sentence in another FIR registered against him at Rajasthan as per the order dated 25.02.2007; subsequent to the conviction in both the cases, while his sentence was suspended in the year 2007 for a period of about more

than 10 years, he is not involved in any other case which shows that he has improved his character and has joined the mainstream of the society and also in view of the fact that he is a person aged about 50 years and has his own family to support, the present appeal is partly allowed and the sentence awarded to the appellant is reduced to the period already undergone by him i.e. 02 years, 03 months and 12 days.

Since, the recovery of fine awarded to the appellant has been stayed by this Court, the fine imposed by the trial Court is also reduced to a sum of Rs.10,000/- with a condition that in default of payment of fine within a period of 08 weeks from today, the appellant shall undergo simple imprisonment for a period of 10 days.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

11.05.2018
yakub

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