

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

CRA-S-896-SB of 2010 (O&M)

Date of decision : 27.01.2018

Rajesh Kumar Yadav

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Deepak Bhardwaj, Advocate for the appellant.

Mr. Saurabh Girdhar, AAG, Haryana.

ANIL KSHETARPAL, J.

The appellant-accused has filed this appeal against the judgment of conviction under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the NDPS Act, 1985”) and order of sentence directing the appellant to undergo rigorous imprisonment for a period of four years and to pay a fine of ₹10,000/- and in default of payment of fine, the appellant shall further undergo rigorous imprisonment for a period of one year.

The facts as noticed by the learned Special Judge, Jind are as under:-

“2. Brief facts of the case are that present FIR has been registered on the basis of rukka Ex.PC to the effect that on 27.4.2009, SI Dharampal alongwith ASI Jaibir Singh, EASI Narinder Singh, EASI Raghbir Singh and EASI Jagdish

Chander were present at Platform No.4 at about 9.50 PM for checking of trains at Railway Station, Jind. In the meantime, a train No.3DJ which had come from Delhi side halted there. Thereafter, SI/SHO Dharam Pal, the Investigating Officer of the case alongwith other police officials checked the coach adjoining engine of the train. During checking, one person who on enquiry disclosed his name as Rajesh Kumar Yadav son of Shri Karu Yadav, resident of Vishnupur Ahok, Police Station Sahebpur Kamal, District Begusarai, Bihar having lathi in his hand was found sitting near the window seat. He had kept one plastic bag white in colour between his feet. On suspicion, he enquired from Rajesh Kumar about the contents of the bag in the presence of Shri Nand Lal son of Khazanchi Lal to which he told that the bag contains Ganja Pati. Thereafter, the bag was checked and it was found to be containing Ganja Pati in a light blue coloured polythene. As accused could not produce any licence or permit to possess the Ganja Pati, on weighing, it was found to be 9 Kg, 500 grams. Out of recovered Ganja Pati, two samples each of 100 grams were separated and the sample parcels and the residue contained in the bag were sealed with seal impression DP and taken into possession. Seal after use was handed over to independent witness, namely Nand Lal. On these facts, rukka Ex.PC was scribed and sent to Police Station for registration of FIR through EASI Raghbir Singh. The accused was arrested. After completion of investigations of the case, the final report under Section 173 of Code of Criminal Procedure was prepared and submitted in the court for trial of the accused.”

The appellant is on bail as per order dated 12.11.2010. As per custody certificate produced, the appellant has undergone total sentence of 2

years 8 months and 21 days including custody as under trial.

The prosecution in order to prove its case has examined PW1 EASI Raghbir Singh, PW2 Head Constable Joginder Singh, PW3 ASI Laxmi Chand, PW4 ASI Narender Singh, PW5 Head Constable Dalbir Singh, PW6 Head Constable Rajbir Singh, PW7 SI Dharampal, PW8 SI Tilak Raj, PW9 Deputy Superintendent of Police, Randhir Singh, Retired and PW10 Rajinder Singh, Reader.

The statement of the appellant under Section 313 of the Code of Criminal Procedure was recorded and the appellant after denying all the incriminating material, pleaded that he has been falsely implicated in this case. No defence evidence was led by the appellant.

Learned Special Judge after appreciating the evidence available on the file held that the prosecution has successfully established its case against the appellant and thus ordered the appellant to undergo rigorous imprisonment for a period of four years.

Although, learned counsel for the appellant has made a sincere attempt to persuade this Court to take a different view while referring to the statement of PW7 Sub Inspector, Dharam Pal, however, the contradictions/variations as pointed out by the learned counsel for the appellant are minor and bound to occur due to time lag (LAG) between the incident and recording of evidence in the Court. Learned counsel for the appellant further made an attempt to submit that recovery from the appellant is *ganja patti* which does not fall within the definition of Narcotics drug. However, on careful examination of the report of the Forensic Science Laboratory, Haryana Madhuban Ex.PK, it is apparent that not only leaves

but fruiting tops and seeds were also recovered. As per Section 2(iii) of the NDPS Act, 1985, flowering or fruiting tops are included in the definition of Cannabis (Hemp). Even the seeds and leaves when accompanied by a fruiting tops fall within the definition of Cannabis as defined in Section 2 (iii) of NDPS Act, 1985.

So keeping in view the aforesaid discussion, this Court does not find any substance in the appeal filed by the appellant. However, incident took place on 27.04.2009. The appellant was convicted on 12.01.2010. He was released on bail on 12.11.2010. The prosecution has failed to bring on record any evidence that the appellant was involved in any other case. The appellant was 25 years of age and first time offender.

Keeping in view the aforesaid facts, while upholding the judgment of conviction, sentence awarded to the appellant is reduced to already undergone. The bail bond submitted by the appellant shall stands discharged.

In view of the aforesaid, the present appeal is disposed of. While affirming the judgment of conviction, the order of sentence is reduced to already undergone.

27.01.2018

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**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No