

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

CRA-S No.1627-SB of 2004 (O&M)

Reserved on: 04.02.2019

Decided on: 06.02.2019

Gurcharan Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Yogesh Kumar Saini, Advocate
for the appellant.

Mr. M.S. Nagra, AAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting-aside the judgment of conviction as well as the order of sentence dated 30.07.2004 vide which the appellant was convicted for offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and was sentenced to undergo rigorous imprisonment for a period of 01 year and to pay a fine of Rs.2000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 15 days.

Brief facts of the case are that on 06.10.2000 ASI Gurbachan Singh accompanied with his co-officials was present in the area of village Galib Kalan, in connection with patrolling and checking of bad elements in a government vehicle bearing registration No.PB-10P-2959. When the police party reached at Bus Stand village Galib Kalan, Kuldip Singh son of Karnail Singh met the police party and

when the police party reached little ahead of bridge canal minor, one person was seen coming carrying a gunny bag on his head, who on seeing the police party at once turned towards 'chari' fields. On suspicion, he was apprehended and on enquiry he disclosed his name as Gurcharan Singh @ Ladi. ASI Gurbachan Singh asked him that he suspects some contraband in his bag and the search of the same is to be conducted and thereafter, he gave an offer to the accused that if he so desires the search can be conducted in the presence of a Magistrate or a Gazetted Officer. The accused reposed confidence in him and gave consent for his personal search. In the presence of the witnesses the search of the gunny bag was carried out and poppy husk was recovered from the same. From the recovered poppy husk two samples of 250 grams of poppy husk each were taken out and the remaining poppy husk on being weighed was found to be 27 Kgs. 500 grams. Both the samples and the gunny bag were prepared into parcel and were sealed by the Investigating Officer, with his seal bearing impression 'GS'. The sample seal was separately prepared and the seal after use was taken into police possession vide recovery memo. The accused was arrested and after completion of the investigation, report under Section 173 Cr.P.C. was prepared and challan was presented before the trial Court.

On presentation of the challan, charge under Section 15 of the NDPS Act was framed against the accused, to which he pleaded not guilty and claimed trial.

The prosecution examined the Inspector Ravinder Pal Singh as PW1, HC Teja Singh as PW2, ASI Gurnam Singh as PW3, C. Sukhjit Singh as PW4, ASI Jaswant Singh as PW5 and SI Gurbachan

Singh as PW6 and closed the evidence.

After conclusion of the evidence of the 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 the prosecution and pleaded that he has been falsely implicated in the case. However, no defence evidence was produced by the appellant/accused.

The trial Court, after hearing learned counsel for the parties and 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 dated and order of sentence dated 30.07.2004, the accused/appellant has preferred the present appeal, which was admitted on 23.08.2004. Thereafter, the sentence of the appellant/accused was also suspended by this Court vide order of even date i.e. 23.08.2004.

Counsel for the appellant has submitted that the appellant has undergone 02 months and 08 days of total sentence out of 01 year rigorous imprisonment awarded by the trial Court.

Counsel for the appellant has further argued that the entire investigation was carried out by the same Investigating Officer. It is further submitted that the FIR pertains to the year 2000 and the sentence of the appellant was suspended by this Court during the pendency of the present appeal and he has never misused the concession of suspension of sentence and is not involved in any other case. It is also 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 18 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 not disputed the fact that the appellant has undergone 02 months and 08 days of total sentence out of 01 year rigorous imprisonment awarded by the trial Court.

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 18 years; the appellant has undergone 02 months and 08 days of total sentence and while his sentence was suspended in the year 2004 for a period of about more than 15 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 poor person 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 months and 08 days.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

06.02.2019
yakub

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