

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

CRA-S-1730-SB of 2004 (O&M)

Date of Decision: 27.02.2019.

Om Parkash

....Appellant.

Versus

State of Haryana

...Respondent.

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Ms. Shelja Sharma, Advocate for
Mr. Rajesh Lamba, Advocate for the appellant.

Mr. Raj Partap Singh Brar, Advocate (Amicus Curiae)
for the appellant.

Mr. D.K. Mittal, Deputy Advocate General, Haryana.

SHEKHER DHAWAN, J.

Present appeal is against the judgment of conviction dated 10.08.2004 and order of sentence dated 11.08.2004 passed by learned Additional Sessions Judge, Fatehabad, whereby the appellant was held guilty and convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the Act') and was sentenced to undergo two years' rigorous imprisonment and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months, in case F.I.R. No.255 dated 15.05.2001 under Section 15 of the Act, registered at Police Station Sadar, Fatehabad.

Facts relevant for the purpose of decision of the appeal: that on 15.05.2001, ASI Shakti Singh alongwith other police officials was

travelling in a private jeep from Village Ahrewan to village Palsar. When they reached near the fields of Balwinder Singh, they saw appellant Om Parkash carrying a plastic bag on his head. When the police party stopped the Jeep, the appellant started running towards the fields. On suspicion, he was apprehended and on his personal search, he was found carrying poppy husk.

Learned counsel for the appellant fairly conceded that the appellant does not challenge the judgment of conviction but took the plea that the appellant has already suffered much agony of law as he has been facing trial since 2001 and he has already undergone total sentence of 06 months and 21 days against awarded sentence of 02 years, so he be released in this case by modifying the order of sentence to the extent of the period already having been undergone by him.

Learned State counsel contended that judgment of conviction dated 10.08.2004 has been duly recorded and order of sentence dated 11.08.2004 also does not require any modification at all because such like offences are increasing in the society and the same need to be curbed with strong hands. The present appeal be dismissed in toto.

Having considered the submissions made by learned counsel for the parties and appraisal of record of this case, this Court is of the considered view that the prosecution case is otherwise proved on the basis of statement of PW4-ASI Shakti Singh, Investigating Officer and PW5-ASI Charan Singh, eye witness to the recovery and all the police proceedings were completed. Notice under Section 50 of the Act (Ex.P8) was given to the appellant and reply to the notice is Ex.P9. All the police proceedings including preparation of recovery memo (Ex.P10), rough site plan (Ex.P11)

and arrest notice (Ex.P12) are available on the file. As per the report of the FSL (Ex.P15), the recovered substance was found to be poppy husk and the defence plea has already been discarded by learned trial Judge. Moreso, there is no challenge to the judgment of conviction. As such, the present appeal against the judgment of conviction dated 10.08.2004 is dismissed.

As regard to quantum of sentence, this Court is certainly inclined to take a lenient view in this case. Considering the fact that the appellant has already undergone total sentence of 06 months and 21 days (including remissions) against the awarded sentence of 02 years as per the custody certificate dated 05.02.2019, he is not a previous convict under the Act, and taking a lenient view on the point of sentence, the order of sentence is modified to the extent that the sentence of appellant-Om Parkash in this case shall be reduced to the period he has already spent while remaining in custody during the period of trial and during pendency of the present appeal.

Resultantly, the present appeal stands disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

27.02.2019.

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Whether Speaking/reasoned : Yes/No

Whether Reportable : Yes/No