

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

CRA-S No.1885-SB of 2004 (O&M)

Decided on: 15.07.2019

Gurdeep Singh @ Dasoa

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Kamal Kumar Yogi, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Joginder Pal Ratra, DAG, 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 29.07.2004, vide which the appellant was convicted for an offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and he was sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of Rs.30,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 05 months.

Brief facts of the case are that on 01.10.2001 SI Gurmail Singh along with some other police officials was going from village Bholath-Rajpur towards Maitla in connection with patrolling and for checking of bad elements. When the police party reached near cremation ground, a person was seen coming from the side of cremation

ground carrying a bag containing something heavy on his head, who on seeing the police party tried to slip away and sat on the earth, near the bushes and on suspicion, he was apprehended with the help of some other police officials. On enquiry, he disclosed his name as Gurdeep Singh @ Deep son of Bachittar Singh resident of village Maitla. In the meantime, Dhani Ram son of Rattan Chand, resident of village Maitla came there and was joined by the police party. SI Gurmail Singh told the accused that he was suspected to be carrying some narcotics in the bag and his search was to be conducted, therefore, he gave him option if he wanted to get his search conducted before any Gazetted Officer or a Magistrate. The accused replied that he wanted to get his search conducted before a Gazetted Officer. His consent memo was prepared. DSP(D) was requested to reach at the spot through wireless message, who reached there after some time and disclosed his identity to the accused as Gazetted Officer and gave option to accused as to whether he wanted to get his search conducted from him or from any Magistrate but the accused reposed confidence in him. Thereafter, on the direction of the DSP, SI Gurmail Singh conducted the search of the bag which was being carried by the accused in his right hand, which was found to contain poppy husk. 250 grams each of poppy husk, was separated as samples and the remaining poppy husk in the bag was found to contain 14 Kgs. 500 grams, the sample and the remaining poppy husk in the bag were sealed with the seals of the SI and the DSP bearing impressions 'GS' and 'SS' and all the parcels were taken into possession vide recovery memo which was attested by the PWs. Specimen of the seals were also prepared. SI handed over his seal after use to PW Dhani Ram

and the DSP retained his seal with him. Ruqa was sent to the Police Station, on the basis of which, a formal FIR was registered. Thereafter, on completion of the investigation, the accused was arrested. Thereafter, sample was sent for analysis before the Assistant Chemical Examiner, Jalandhar and on receiving the report, the challan under Section 173 of the Code of Criminal Procedure (in short 'Cr.P.C.') was submitted 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 did not plead guilty and claimed trial.

The prosecution examined SI Gurmail Singh as PW1, HC Lakhwinder Singh as PW2, SI Gurbachan Singh as PW3, Constable Raj Pal as PW4, HC Sukhvinder Singh as PW5 and DSP Sukhvinder Singh as PW6 and thereafter, closed the evidence.

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 but he denied the allegation of the prosecution and pleaded that he has been falsely implicated in the case. In defence evidence, one witness i.e. DW-1 – Gurdial Singh was examined by the appellant.

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 as well as the order of sentence dated 29.07.2004, the accused/appellant

has preferred the present appeal, which was admitted on 30.09.2004. Thereafter, the sentence of the appellant/accused was also suspended by this Court vide order dated 05.11.2004.

Counsel for the appellant has argued that the appellant has undergone 11 months and 15 days of actual sentence out of 03 years rigorous imprisonment awarded by the trial Court as per the Custody Certificate dated 11.07.2019. The FIR pertains to the year 2001 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. 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 18 years, therefore, by taking a lenient view, the sentence awarded to the appellant may be reduced to the period already undergone by him.

Counsel for the appellant has relied upon the judgment passed by the Hon'ble Supreme Court ***“State of Haryana vs Joginder Ram”***, 2015(6) RCR (Criminal) 97 to argue that the sentence under the NDPS Act can be reduced to the period already undergone by the accused. Counsel for the appellant has further relied upon the judgment ***“Mukesh Kumar vs State of M.P. (Now Chhatisgarh)”***, 2015(1) RCR (Criminal) 251, wherein the Hon'ble Supreme Court in case of a conviction of 06 months rigorous imprisonment had reduced the sentence of the appellant to the period already undergone by him. Lastly, counsel for the appellant has relied upon the judgment passed by this Court in ***“Tarsem Singh vs State of Punjab”***, 2017(2) RCR (Criminal) 109 wherein it has been held by this Court that where

recovery is of non-commercial quantity; the accused has undergone the substantive sentence; he is not involved in any other case, his sentence can be reduced to the period already undergone by him.

Counsel for the State has not disputed the fact that the appellant has undergone 11 months and 15 days of actual sentence out of 03 years 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 11 months and 15 days of actual sentence and he has not misused the concession of suspension of sentence 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. 11 months and 15 days.

Disposed of accordingly.

However, the fine of Rs.30,000/- is upheld. The appellant is granted 03 months time to deposit the fine, failing which the appeal shall be deemed to be dismissed without any further order.

(ARVIND SINGH SANGWAN)
JUDGE

15.07.2019
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No