

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

CRA-S-2143-SB of 2004

Date of Decision:01.03.2019

Jaswinder Kaur

....Appellant

Versus

State of Punjab

....Respondent

CORAM:HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Ms. Kamaldeep Kaur, Advocate for
Mr. Madan Mohan, Advocate
for the appellant.

Mr. C.L. Pawar, Sr. DAG, Punjab.

MAHABIR SINGH SINDHU, J.(Oral)

Present appeal has been filed against the judgment of conviction and order of sentence dated 16.09.2004 passed by learned Special Judge, Fatehgarh Sahib, whereby the appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act of 1985') and sentenced to undergo rigorous imprisonment for 1 ½ years alongwith fine of Rs. 1,000/-, in default of payment of fine to further undergo rigorous imprisonment of two months.

As per the allegations of the prosecution, the appellant

was found in possession of 17 ½ Kg of Poppy Husk in the area of Bus Stand Rajindergarh on 27.04.2003 at about 8-10 p.m. and an FIR No. 31 dated 27.04.2003, under Section 15 of Act of 1985 was registered at Police Station Mulepur, District Fatehgarh Sahib. Recovery was effected in the presence of Nazar Singh-owner of Vaishno Dhaba.

In order to prove the case, prosecution examined four witnesses and brought on record documentary evidence. The entire incriminating material was put before the appellant and his statement was recorded under Section 313 Cr.P.C., wherein she pleaded false implication and claimed innocence.

Learned Special Judge after taking into consideration the entire material available on record, convicted and sentenced the appellant in the terms mentioned in the opening of this order.

Learned counsel for the appellant instead of challenging the conviction, has confined her prayer only to the quantum of sentence. It is contended by learned counsel for the appellant that independent witness, namely, Nazar Singh has not been examined by the prosecution, therefore, an adverse inference be drawn against the prosecution. It is further contended that since the occurrence had taken place on 27.04.2003 and the appellant has already undergone the actual sentence of three months and thirteen days. Also contended that there is no other criminal case pending against her and prayed for leniency of sentence.

Learned State counsel has vehemently opposed the submissions of appellant and prayed for dismissal of the appeal.

Heard learned counsel for the parties and perused the paper book.

Undisputedly, the occurrence had taken place way back on 27.04.2003 and the appellant was convicted and sentenced by learned Special Judge, Fatehgarh Sahib on 16.09.2004 and after that she has not indulged in any criminal activity.

In view of the factual position depicted hereinabove, it is apparently clear that the appellant has turned to the main stream of the society as a law abiding citizen and she has not committed any crime after registration of FIR No. 31 dated 27.04.2003 as well as conviction in the present case. Although the provisions of the Act of 1985 are very stringent and this Court should not show any undue leniency while imposing sentence, but keeping in view the fact that she is a female and there is no recurrence on her part after the registration of the present case. Therefore, taking into consideration this factor as a mitigating circumstance, this Court is of the opinion that the sentence of the appellant deserves to be reduced for the period already undergone by her.

Consequently, the conviction of the appellant is upheld and the substantive sentence of imprisonment is reduced from 1 ½ years for offence punishable under Section 15 of the Act, 1985, to the sentence already undergone. Sentence qua fine remain intact. If fine not paid then the same be deposited with learned trial Court/Successor Court within 30 days. If she fails to deposit the same in the stipulated time then learned trial Court/Successor Court may take coercive steps

to recover the same.

The appeal, as such, is partly accepted to the extent indicated above regarding reduction in quantum of sentence only.

[MAHABIR SINGH SINDHU]
JUDGE

March 01, 2019
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Whether speaking/reasoned	yes/no
Whether reportable?	yes/no