

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

CRA-S-2275-SB-2004 (O&M)

Date of decision: 09.09.2019

Rajinder Singh

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Jasraj Singh, Advocate
for the appellant.

Mr. Jagmohan Ghuman, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this appeal is for setting aside the judgment of conviction as well as the order of sentence dated 08.11.2004, vide which the appellant was convicted for an offence punishable under Section 21 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 01 year and to pay a fine of Rs.25,000/- and in default of payment of fine; he was directed to further undergo rigorous imprisonment for a period of 03 months.

Brief facts of the case, as per prosecution, are that on 29.09.2002, ASI Vishwa Mitter, along with other police officials, was present near Vijay Chowk, Amritsar, in connection with patrolling. He received a secret information that Rajinder Singh @ Kaka (appellant) of Hindustan Basti is dealing in smack and coming on a scooter to distribute the smack to various customer. Thereafter, the Investigating Officer joined a witness from the general public and apprehended the appellant and was

asked whether he wanted to be searched before a Magistrate or a Gazetted Officer, to which, appellant opted to be searched before a Gazetted Officer. Accordingly, a memo was recorded and DSP City-II was called at the spot. Thereafter, DSP reached at the spot and in his presence, the search was conducted and from the dicky of the said scooter, smack was recovered, out of which, a sample of 5 grams was separated and the remainder was weighed as 35 grams. Sample and remainder were made into two separate parcels which were sealed with the seal bearing impression 'VM'. On further search, a sum of Rs. 300/- was also recovered from the appellant. As the accused could not produce any permit or licence to carry the recovered contraband, a ruqa was written and sent to the police station, whereupon a formal FIR was recorded. After necessary investigation, the sample was sent for chemical examination and a report was received from Public Analyst-cum-Assistant Chemical Examiner, in which, it was confirmed that the recovered contraband was *Diacetylmorphine*, which is also known as smack. On receipt of the aforesaid report and on completion of the investigation, 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 21 of the NDPS Act was framed against the accused, to which he did not plead guilty and claimed trial.

The prosecution examined IO/ASI Vishwa Mitter as PW1, Constable Aroor Singh as PW-2, Inspector Buta Ram as PW-3 and DSP Chaman Lal as PW-4. HC Kuldip Singh, Constable Nirvail Singh, SI Gurjit Singh, MHC Palwinder Singh were given up being unnecessary and PW Raj Kumar as having been won over by the accused and thereafter, the

prosecution closed the evidence. In defence evidence, one witness i.e. DW-1 HC Inderjit Singh was examined by the appellant.

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.

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 21 of the NDPS Act and sentenced him to undergo rigorous imprisonment for a period of 01 year and to pay a fine of Rs.25,000/- and in default of payment of fine; he was directed to further undergo rigorous imprisonment for a period of 03 months

Feeling dissatisfied with the judgment of conviction as well as the order of sentence dated 08.11.2004, the accused-appellant has preferred the present appeal, which was admitted on 29.11.2004 and on the same date, the sentence of the appellant-accused was also suspended by this Court.

Counsel for the appellant has argued that the appellant has undergone 01 month and 29 days of actual sentence out of 01 year of rigorous imprisonment awarded by the trial Court as per the Custody Certificate dated 27.08.2018. The FIR pertains to the year 2002 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 17 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 the 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 01 month and 29 days of actual sentence out of 01 years of 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 17 years; the appellant has undergone 01 month and 29 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. 01 month and 29 days.

Disposed of accordingly.

However, the fine of Rs.25,000/- is upheld. The appellant is granted 03 months time to deposit the fine, failing which the appeal shall be deemed to have been dismissed without any further order.

09.09.2019
Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No