

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

CRA-S No.2357-SB of 2004 (O&M)

Decided on: 24.05.2019

Labh Singh

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Ms. Swati Batra, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting-aside the judgment of conviction dated 17.11.2004 convicting the appellant for offence punishable under Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') as well as the order of sentence dated 18.11.2004 vide which the appellant was sentenced to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 06 months.

Brief facts of the case are that on 30.04.2000 Raghubir Singh, SI along with other police officials was present at Bus stop, Bamanwala in connection with patrolling duty. During that time, one Sukhdev Singh met him and during their conversation, the accused was seen coming from the side of village Rojanwali, having a plastic bag, in his right shoulder. On seeing the police party, he turned back and started walking briskly towards village Rojanwali and he was

apprehended on suspicion. After interrogation of the accused, a notice under Section 50 of NDPS Act was served upon him by the ASI to the effect that the SI is suspected of having some contraband substance in his bag and the accused, if he so desire, his search can be conducted in the presence of a Magistrate or a Gazetted Officer after calling at the spot. The notice was read over and explained to the accused, who put his thumb impression on the same. In reply, the accused reposed confidence in the police party. Accordingly, on search of the bag of the accused, poppy straw was found. 100 grams of poppy straw was separated as sample and the same was converted into a sealed parcel bearing seal 'RS' and the remainder on weighment was found to be 17.00 kgs., which was also put in the same bag and was converted into a sealed parcel sealed with same seal. The case property and the sample were taken into police possession vide separate recovery memo. The seal after use was handed over to PW Sukhdev Singh. Written information to the police station was sent, on the basis of which formal FIR was registered. The Investigating Officer also prepared the rough site plan of the place of recovery on the correct marginal notes and recorded the statement of the witnesses and completed the investigation at the spot and formally arrested the accused. On return to the police station, the Investigating Officer produced the accused along with the case property and the witnesses before SHO Sandeep Singh, who verified the facts and after verification he affixed his own seal 'SS' on each of the parcel. As per the direction of the SHO, the Investigating Officer handed over the case property and the sample to the MHC and put the accused in police lock up. Thereafter, the same was sent to the

office of the Chemical Examiner for analysis and on completion of the investigation, the formal charge-sheet was filed against the accused and was submitted in the Court of the Illaqa Magistrate and thereafter, the case was committed to the Court of the Additional Sessions Judge, Hisar camp at Fatehabad.

On presentation of the challan, charge under Section 15 of the NDPS Act was framed against the accused on 14.11.2000, to which he did not plead guilty and claimed trial.

The prosecution examined PW1 – ASI Ved Parkash, PW2 – HC Ramphal, PW3 – Inspector Jaipal Singh, PW4 – HC Om Parkash, PW5 – HC Ram Kishan, PW6 – ASI Sandeep Singh, PW7 – Surender Singh and PW8 – Raghubir Singh 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 to tender explanation for the same. The appellant/accused denied the allegation of prosecution and pleaded that he has been falsely implicated in the case. However, no defence evidence has been led by the appellant/accused.

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(b) of the NDPS Act.

Feeling dissatisfied with the judgment of conviction dated 17.11.2004 and order of sentence dated 18.11.2004, the accused/appellant has preferred the present appeal, which was admitted on 02.12.2004. Thereafter, the sentence of the appellant/accused was

also suspended by this Court vide order dated 06.01.2005.

Counsel for the appellant has argued that one of the prosecution witnesses namely Sukhdev Singh, who was cited as an independent witness was not examined by the prosecution and rather he appeared as a defence witness in which he stated that no recovery was effected in his presence and the police has obtained his signatures on the blank papers. It is further submitted that the recovery was effected on 30.04.2000 and there is a delay of 16 days in sending the sample to FSL, which was received on 17.05.2000 and therefore there is no explanation of the delay. It is further submitted that the appellant has undergone 04 months and 14 days of actual sentence out of 02 years rigorous imprisonment awarded by the trial Court. 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. 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 be reduced to the period already undergone by him.

Counsel for the State has not disputed the fact that the appellant has undergone 04 months and 14 days of actual sentence out of 02 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 04 months and 14 days of actual sentence and while his sentence was suspended in the year 2005 for a period of about more than 13 years (approx.), 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. 04 months and 14 days.

Disposed of accordingly.s

(ARVIND SINGH SANGWAN)
JUDGE

24.05.2019
yakub

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