

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

CRA-S No.2510-SB of 2004 (O&M)

Decided on: 27.02.2019

Bahal Singh

....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. Sidakmeet S. Sandhu, AAG, 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 05.10.2004 vide which the appellant was convicted for offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and was sentenced to undergo rigorous imprisonment for a period of 01 year and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 02 months.

Brief facts of the case are that on 28.09.2001, SI Rupinder Kumar along with other police officials on private jeep was going on the metaled road from Khai to Arkwas in connection with patrolling and when the police party was short of 50 karam from the bridge of minor canal in the vicinity of village Khai, then Gurcharan Singh son of Amar Singh Ghumiar resident of Lehra met the police party. He was talking with the police party. In the meantime, a person was seen

coming on the bridge of minor canal. He on seeing the police party got perplexed and immediately retreated. Thereafter, he was apprehended on suspicion and on asking, he disclosed his name as Bahal singh son of Gopal Singh Caste Bisnoi resident of Pirthaia Police Station Sadar Tohana District Fatehabad (Haryana). Thereafter, the Sub-Inspector asked him that he was suspecting some intoxicant in the right pocket of the pants which he (the accused/appellant) was wearing, so search was to be conducted and he had got a right to be searched in the presence of a Magistrate or a Gazetted officer. The accused, then, replied that he wanted his search to be conducted in the presence of a Gazetted Officer. His statement was recorded. A request was made to the police station on the wireless set to request DSP H. S.Gurdial Singh, who was officiating as D.S.P. Moonak to reach at the spot. At 4.30 p.m. DSP Gurdial Singh reached at the spot in a government gypsy bearing No.PB-13, 2002 alongwith his gunman. He, thereafter, introduced himself to above said Bahal Singh that he i.e. Gurdial Singh, was a Gazetted Officer and was working as D.S.P. Moonak and he wanted to search the right pocket of the pants which the accused (Bahal Singh) was wearing and also informed him that he had got a right to be searched before a Magistrate. The abovesaid Bahal Singh reposed confidence in D.S.P., and asked him to conduct the search. His statement was recorded. On search of the right pocket of the pants of Bahal Singh, opium wrapped in a polythene paper was recovered. Two samples of 10 grams each were separated which were put into the separate plastic boxes and the same were converted into parcels. Remaining opium, on weighing, was found to be 500 grams which was also put into plastic box and was parceled. Both

the sample parcels and the above said bulk parcel containing opium were sealed with the seal of 'DSP' bearing impression 'GS' and the same were taken into possession vide separate recovery memo along with the sample seal chit separately prepared. The seal after use was handed over to Gurcharan Singh. From the personal search of accused Rs.25/- were also recovered. Ruqa was sent to the of police station on the basis of which, the case in question was registered against the accused. On return to the police station, case property and the witnesses were produced before SHO, who put his seal on the case property and the sample seal chit. Case property was deposited with MHC. The accused was arrested and after completion of the investigation, report under Section 173 Cr.P.C. was prepared and challan was presented before the trial Court. One part of the sample was sent to Chemical Examiner and the report was received.

On presentation of the challan, charge under Section 18 of the NDPS Act was framed against the accused, to which he pleaded not guilty and claimed trial.

The prosecution examined HC Balbir Singh as PW1, C. Kashmir Singh as PW2, MHC Joginder Singh as PW3, Inspector Jaswinder Singh as PW4, Parmodh Kumar, Ahlmad as PW5, S.P. Gurdial Singh as PW6, Inspector Rupinder Kumar as PW7. PW Gurcharan Singh was given up being won over by the accused and C. Krishan Kumar was also given up being unnecessary and closed the evidence.

After conclusion of the evidence of the 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 the prosecution and pleaded that he has been falsely implicated in the case. However, no defence evidence was produced by the appellant/accused.

The trial Court, after hearing learned counsel for the parties and appreciating the evidence on record, convicted and sentenced the appellant/accused under Section 18 of the NDPS Act.

Feeling dissatisfied with the judgment of conviction dated and order of sentence dated 05.10.2004, the accused/appellant has preferred the present appeal, which was admitted on 17.12.2004. Thereafter, the sentence of the appellant/accused was also suspended by this Court vide order dated 07.03.2005, noticing that out of 01 year imprisonment, the appellant has undergone 08 months of total sentence.

Counsel for the appellant has submitted that the appellant has undergone 08 months of total sentence out of 01 year rigorous imprisonment awarded by the trial Court.

Counsel for the appellant has further argued that the FIR pertains to the year 2001 and the sentence of the appellant was suspended by this Court during the pendency of the trial, he was on bail and even during pendency of the present appeal and he has never misused the concession of suspension of sentence and is not involved in any other case. It is also 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 08 months of total sentence out of 01 year 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 08 months of total sentence and while his sentence was suspended in the year 2005 for a period of about more than 14 years, 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. 08 months. However, the imposition of fine of Rs.1,000/- is upheld. The appellant is directed to deposit the fine, if not deposited so far, within a period of 03 months from today.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

27.02.2019
yakub

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