

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

**CRA-S No.260-SB of 2004 (O&M)
Decided on: 18.07.2019**

Gian Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Ms. Ruchi Sekhri, Advocate
for the appellant.

Mr. G.S. Sharma, 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 15.01.2004, 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 05 years and to pay a fine of Rs.50,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 01 year.

Brief facts of the case are that on 30.12.2011 at about 08:00 PM, the police party including SI Mukhtiar Singh, the Investigating Officer, ASI Jagdish Lal, ASI Rachhpal Singh, HC Jagjit

Singh, C-II Kulwant Singh and C. Boota Singh were on routine nakabandi duty on their official vehicle Gypsy bearing registration No.PB-04-3099, which was being driven by PHG Jaskaran Singh and they were going from Katcha Rasta in the area of village Dhudi towards main Faridkot-Talwandi G.T. Road. When they came across Chamkaur Singh @ Bhor, Ex-Sarpanch of village Dhudi, he was joined in the police party and thereafter, they laid a naka at 08:00 PM, near a Katcha Rasta, which was going towards the fields near T-point. They saw one person carrying a gunny bag on his head coming from the side of G.T. Road on the Katcha Rasta, who tried to turn back towards the fields and thereafter, on suspicion he was apprehended and disclosed his name as Gian Singh son of Gurdit Singh resident of village Dhudi, residing at village Chandarh, Police Station Ghal Khurd, District Ferozepur. Thereafter, the Investigating Officer SI Mukhtiar Singh expressed his suspicion to the accused that he suspected him of carrying some intoxicant substance, therefore, his personal search was to be conducted and the police party introduced and apprised Gian Singh of his right to be searched in the presence of a Gazetted Officer or a Magistrate. The accused gave his consent, which was reduced into writing duly signed by the accused and attested by ASI Rachhpal Singh and PW Chamkaur Singh and on the basis of the same, a Q.S.T. message was sent to the Deputy Superintendent of Police Des Raj of Special Branch, who reached the spot and after introducing himself to the accused, he prepared a similar memo seeking consent of the accused regarding personal search and thereafter, SI Mukhtiar Singh on the directions of the DSP Des Raj, conducted personal search of the accused and from

the gunny bag being carried out by the accused, poppy husk was recovered, out of which 250 grams of the contraband was taken out as sample and the remaining contraband came to 40 Kgs and 750 gms., which was retained in the same very gunny bag. The sample as well as the remaining contraband were prepared in a separate parcels, which was duly signed with seal bearing impressions 'MS' of SI Mukhtiar Singh and 'DSR' of Des Raj DSP and after preparing the specimen seal impression, all the articles were taken into police possession through separate recovery memo, which was attested by the independent witness, besides ASI Rachhpal Singh and counter-signed by DSP Des Raj. The seal after use was handed over to Chamkaur Singh and on further search of the accused, a sum of Rs.250/- was also recovered, which was taken into police possession. Statement of witnesses was recorded. Ruqa was sent to the Police Station through C. Boota Singh for registration of the present FIR, by SI Major Singh. The Investigating Officer prepared the rough site plan of the place of recovery with correct marginal notes and sent report under Section 57 of the Act and on 31.12.2001, the accused was produced before the Illaqa Magistrate along with the articles. The contraband was later on deposited with MHC and on receipt of the report of the Chemical Examiner and on completion of the investigation, challan against the accused was presented 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 C. Baldev Krishan as PW-1,

who tendered his affidavit Ex.PA, regarding deposit of the sample parcel on 31.12.2001 at the office of the Chemical Examiner, Punjab, Chandigarh.

The Investigating Officer, SI Mukhtiar Singh as PW-2, who proved the finer aspect of the investigations, apprehension of the accused and recovery of the contraband weighing 41 kilograms consisting of poppy heads from the conscious possession of the accused and proved the documents consisting of consent memo Ex.P1, introduction memo Ex.P2, which was prepared by the DSP on his arrival, residual parcel Ex.MO1, recovery memo Ex.P3, another recovery memo Ex.P4 regarding taking into possession of a sum of Rs.520/- which was recovered from the accused, grounds of arrest as Ex.P5, memo regarding sending of information to the relatives of the accused Ex.P6, rough site plan as Ex.P7, special report under Section 57 of the Act as Ex.P8, application for production of the accused and the case property before the Illaqa Magistrate as Ex.P9 and the report of the Chemical Examiner as Ex.P10 and also deposed regarding the preparation and presentation of the challan.

The independent witness Chamkaur Singh as PW-3, who deposed on the same line and proved the recovery from the possession of the accused and his signatures on the consent memo Ex.P1, introduction memo Ex.P2, recovery memo Ex.P3, personal search memo Ex.P4, grounds of arrest Ex.P5, intimation memo Ex.P6.

Thereafter, L.C. Labh Singh was examined as PW4, who deposed regarding handing over the special reports to the various officials on 31.12.2001.

ASI Rachhpal Singh was examined as PW5 and he also deposed on the same line and proved his signatures on the consent memo Ex.P1, introduction memo Ex.P2, recovery memo Ex.P3, personal search memo Ex.P4, grounds of arrest Ex.P5, intimation memo Ex.P6.

H.C. Jaswant Singh was examined as PW6, who tendered his affidavit as Ex.P12 regarding deposit of the articles before him while he was posted as MHC.

CII-Bhupinder Kumar was examined as PW7, who proved the special report under Section 57 of the Act as Ex.P13, which was received in the office of DSP, Sub Division Faridkot on 31.12.2001 at 12:30/01:00 PM.

The Deputy Superintendent of Police Des Raj appeared as PW8 and deposed regarding receipt of information by him from SI Mukhtiar Singh and regarding recovery of contraband from the possession of the accused and supported the version of SI Mukhtiar Singh and thereafter, the prosecution closed its 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, 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, the accused tendered his statement made in case FIR No.7 dated 18.01.2000 registered under Sections 325/34 IPC at Police Station City Faridkot as Ex.DC and thereafter, closed the defence evidence.

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 15.01.2004, the accused/appellant has preferred the present appeal, which was admitted on 10.02.2004. Thereafter, the sentence of the appellant/accused was also suspended by this Court vide order dated 02.11.2004.

Counsel for the appellant has argued that the appellant has undergone 01 year 01 month and 20 days of actual sentence out of 05 years rigorous imprisonment awarded by the trial Court as per the Custody Certificate dated 24.04.2019. 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. It is also submitted that the appellant is not involved in any other case of NDPS Act.

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 01 year, 01 month and 20 days of actual sentence out of 05 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 01 year, 01 month and 20 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 year 01 month and 20 days. However, the fine of Rs.50,000/- is also reduced to Rs.20,000/- and the appellant is granted 04 months time to deposit the fine, failing which the appeal shall be

deemed to be dismissed without any further order.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

18.07.2019
yakub

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