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

CRA-S-640-SB of 2004(O&M)

Date of decision: July 22, 2019

Sukhwinder Singh

.....Appellant

Versus

State of Haryana

.....Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. G.S. Sandhu, Advocate
for the petitioner.

Mr. Saurabh Mago, AAG, Haryana.

MAHABIR SINGH SINDHU, J (Oral)

Present appeal has been filed against the impugned judgment of conviction dated 11.03.2004 and order of sentence dated 15.03.2004 passed by learned Judge, Special Court, Karnal, vide which the appellant was sentenced to undergo rigorous imprisonment for a period of 1 year and 3 months and also to pay fine of Rs. 3,000/- under Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'The Act') and in default of payment of fine to undergo further rigorous imprisonment for three months.

Brief facts of the case are that on 12.04.2002 ASI Ishwar Singh of Police Station Assandh alongwith other police officials were present at bus stand of village Chaugawa, where Dharam Pal, Naib Tehsildar came and when ASI Ishwar was talking to him, the appellant came from the side of Kaithal carrying a plastic 'katta'(Bag) in his hand and on seeing the

police party he tried to get down in the ditches on the left side of the road,

but on suspicion he was apprehended. Since ASI Ishwar Singh was suspecting some narcotic in his bag, so a notice under Section 50 of the NDPS Act was served upon him by giving option to be searched either in the presence of a gazetted officer or a Magistrate. The petitioner gave reply Ex.(PD/1), vide which he expressed his desire to get the 'katta'(bag) searched in the presence of Magistrate. On searching of 'katta' 19.6 Kgs of poppy husk was recovered and out of which two samples, each of 200 gms were drawn. Samples and remaining contraband were sealed separately with seal IS and DP and taken into possession vide a memo duly attested by the witnesses. The seal after use was handed over to HC Jagbir Singh, while Dharam Pal Naib Tehsildar retained his seal with him. The separate seal impressions of IS and DP were also prepared. ASI Ishwar Singh sent rukka to the Police Station upon which formal FIR was registered. After completion of the usual investigation, report under Section 173 Cr.P.C. was submitted and after complying with the provisions of Section 207 Cr.P.C., accused was chargesheeted for commission of offence under Section 15 (b) of NDPS Act to which he pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined HC Jagbir Singh as PW1, Constable Vinod Kumar as PW2, Constable Baljinder Singh as PW3, Inspector Kaptan Singh as PW4, SI Ram Mehar as PW5, Naib Tehsildar Dharam Pal as PW6, HC Jagir Singh as PW7 and ASI Ishwar Singh as PW8 as well as documentary evidence and the same was put to the accused under Section 313 Cr. P.C., wherein he claimed innocence by raising the plea of false implication.

After hearing both sides and perusing the record, learned trial Court held the petitioner guilty under Section 15(b) of NDPS Act and

sentenced to undergo rigorous imprisonment for a period of 1 year and 3 months and also to pay fine of Rs. 3,000/- and in default of payment of fine to undergo further rigorous imprisonment for three months.

Aggrieved against the judgment and order passed by the learned trial Court, the appellant filed the present appeal

Learned counsel for the appellant instead of challenging the conviction, confines his prayer only to the quantum of sentence. It is submitted that appellant has already undergone the actual sentence of one year and eighteen days and he is ready to bear some more fine and his imprisonment be reduced to the period already undergone by him.

On the other hand, learned State counsel has not seriously opposed the contention raised by learned counsel for the appellant keeping in view the facts and circumstances of the case.

Heard both the parties and perused the paper-book.

The sentence of the appellant was suspended by this Court on 22.03.2004 and he has not misused the concession of bail. Conviction is under Sections 15 (b) of NDPS Act for 1 year and 3 months and out of which, the appellant has already undergone the actual sentence of 1 month and 18 days and there is no other criminal case pending against him and the recovery effected from the appellant is non commercial. After 2002, the appellant is not found indulged in any other criminal activity thus, he has turned to the main stream of the society as a law abiding citizen. 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 the appellant has already suffered the agony of protracted litigation since year, 2002 and being a poor person having the liability to

maintain his family, in the opinion of this Court, these can be considered as mitigating circumstances. Therefore, this Court is of the opinion that the sentence of the appellant deserves to be reduced for the period already undergone by him, but with a rider that fine is enhanced to Rs. 15,000/- instead of Rs. 3,000/-.

Consequently, the conviction of the appellant is upheld and the substantive sentence of imprisonment is reduced from one year and three months for offence punishable under Section 15 (b) of the Act, 1985, to the sentence already undergone i.e. 01 month and 18 days, but increased the fine from Rs. 3,000/- to the tune of Rs. 15,000/-.

However, it is clarified that the fine shall be deposited with learned trial Court/Successor Court within 60 days from today. If he fails to deposit the same in the stipulated time then learned trial Court/Successor Court may take coercive steps to recover the same.

Disposed off in the above terms.

(MAHABIR SINGH SINDHU)
JUDGE

July 22, 2019

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No