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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1946-SB-2010
Date of Decision : March 20, 2019

Sukhwinder Singh alias Sukha
..... Appellant

Versus

State of Punjab
..... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Parminder Singh Sekhon, Advocate,
for the appellant.

Mr. Rajat Bansal, AAG, Punjab,
for respondent-State .

SHEKHER DHAWAN, J.

Present appeal is directed against the judgment of conviction and order of sentence dated 22.05.2010, passed by learned Judge of Special Court, Ferozepur whereby appellant-Sukhwinder Singh alias Sukha was convicted and sentenced as under:-

Under Section	Sentence	In default
18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (for short " the Act ")	to undergo Rigorous Imprisonment for a period of Ten years and to pay a fine of Rs.1,00,000/-	to further undergo R.I. for a period of Two years.

2. Facts relevant for the purpose of decision of the appeal; that on 21.02.2008, the police party was on patrolling duty and were present at bridge of Seepage drain in the area of Village Jhoke Hari Har, at about

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12.00 noon, they saw the appellant coming from the side of village Jhoke Hari Har carrying a bag in his right hand. On seeing the police party, he tried to turn towards his left hand side in order to run away. On this, the accused was apprehended and the bag was searched in the presence of Gazetted officer, DSP Rajinder Singh and Shamsheer Singh, Ex-Sarpanch of the village, who was joined as an independent witness. On the directions of DSP, SI Major Singh, Investigating Officer conducted search of the bag (Jhola) of the accused and opium wrapped in a glazed paper was recovered. Out of the recovered quantity, two samples of ten grams each of opium were separated and their parcels were prepared and the remaining opium came to be 04 Kgs. 980 gms. Two sample parcels were sealed by the Investigating Officer with his seal bearing letters 'MS' and that of the seal of D.S.P. bearing letters 'RS'. The entire case property was taken into possession vide recovery memo Ex. P4. As per the report Ex. P12 of Chemical Examiner, the contents of the sample were found to be of opium. After completion of investigation proceedings, challan was presented in the Court for trial.

3. During trial, learned Court below completed various proceedings of trial including framing of charge against the accused, recording of evidence of the witnesses and examination of accused under Section 313 Cr.P.C. After considering the prosecution and the defence evidence on record, learned Judge of Special Court, Ferozepur held the accused-appellant guilty and convicted him for commission of offence punishable under Section 18 of the Act and sentenced him vide judgment and order dated 22.05.2010 as mentioned in para No.1 above.

4. Aggrieved of passing of judgment of conviction and order of

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sentence, the appellant is before this Court by way of present appeal.

5. At the very outset, learned counsel representing the appellant contended that he does not challenge the judgment of conviction and a lenient view on the point of sentence be taken as the appellant has already undergone total sentence of 09 years, 06 month and 19 days (including remissions) as per custody certificate dated 18.03.2019 against the awarded sentence of 10 years.

6. Learned State counsel contended that keeping in view the recovery of heavy quantity of opium from the appellant, he does not deserve any concession with regard to quantum of sentence even and the present appeal be dismissed.

7. Having considered the submissions made by learned counsel for the parties and appraisal of record, this Court is of the considered view that learned trial Court has already appreciated the evidence in its perspective manner. The prosecution has successfully proved on record the recovery of heavy quantity of opium from the accused-appellant and all the witnesses have supported the prosecution version. Learned trial Judge has rightly held that the testimonies of official witnesses cannot be discarded merely on the ground of their official status and there is nothing on record to show that the prosecution witnesses had any enmity to falsely implicate the accused. As such, no interference is called for in the findings recorded by learned trial Judge and the present appeal qua judgment of conviction passed by the Court below, stands dismissed.

8. As regard to quantum of sentence, this Court is certainly inclined to take a lenient view in this case. Considering the fact that the appellant has already undergone total sentence of 09 years, 06 month and

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19 days (including remissions) as per custody certificate dated 18.03.2019 against the awarded sentence of 10 years and that he is not a previous convict under the Act, taking a lenient view on the point of sentence, the order of sentence is modified to the extent that the sentence of appellant – Sukhwinder Singh alias Sukha in this case shall be reduced from 10 years to **8 years** with no change in fine amount and in default of payment of fine, to further undergo R.I. for a period of **One year**. The appellant is in custody in this case. As a consequence of this, the appellant be released from custody if not required in any other case.

9. Resultantly, the present appeal stands disposed of in the above terms.

(SHEKHER DHAWAN)
JUDGE

March 20, 2019

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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes