

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

**CRA-S No.324-SB of 2005 (O&M)
Decided on: 16.07.2019**

Kabal Singh

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. H.S. Randhawa, Advocate (Legal Aid Counsel)
for the appellant.

Mr. Deepak Aggarwal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting-aside the judgment of conviction as well as the order of sentence dated 09.02.2005 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 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 03 months.

Brief facts of the case are that the Deputy Superintendent, Central Jail, Ambala Sh. S.P.S. Chauhan, gave a complaint Ex.PA to the Station House Officer, Police Station Ambala City vide memo No.5038 dated 11.04.2001 that on 11.04.2001 after meeting of the relatives of

undertrials/convicts with their relatives, on suspicion of some narcotic drug and it was requested that some Magistrate should be deputed for taking/conducting the search of the under-trials/convicts Tehal Singh and Kabal Singh. Thereafter, ASI Raj Kumar accompanied by H.C. Randhir Singh and C. Mange Ram went to the office of the Deputy Commissioner/District Magistrate, Ambala and moved an application Ex.PE for deputing some Executive Magistrate, which was marked to the District Revenue Officer, who deputed the Naib Tehsildar, Ambala City to perform the duty as Executive Magistrate. The Investigating Officer contacted the Executive Magistrate Mr. Ashwani Kumar on telephone and requested him to reach the Central Jail, Ambala. The Investigating Officer ASI Raj Kumar accompanied by other police officers reached the gate of Central Jail, Ambala where Mr. Rattan Lal, Assistant Superintendent, Central Jail, Ambala and Mr. Mehar Singh, Warden, Central Jail, Ambala met them in the gallery. Two convicts Kabal Singh and Tehal Singh son of Sada Singh were also there. The accused Kabal Singh was having a packet of ghee in his right hand. Thereafter, notices Ex.PF and Ex.PG were given to the accused Kabal Singh and Tehal Singh, respectively under Section 50 of the NDPS Act, on which both of them mentioned that they wanted the Magistrate to conduct their search. Thereafter, both the persons were produced before the Naib Tehsildar, who ordered the Investigating Officer to conduct their search. Nothing was found during the search of the convict/under-trial Tehal Singh and from the search of the accused – Kabal Singh, a packet containing opium was found in the polythene bag of ghee. The opium recovered was weighed and it was found to be 100 grams. 20

gms. each of opium out of the recovered opium was separated as samples and the same were sealed into two different parcels with the impression 'I.S'. The seal was handed over to Rattan lal and the packets containing the opium were taken into police custody vide recovery memo Ex.PC. The information Ex.PB was sent through C. Mange Ram to the Police Station Baldev Nagar, Ambala City on the basis of which formal FIR (Ex.PB/1) was recorded by ASI Ishwar Singh. Site plant Ex.PH was prepared and notice under Section 57 of the Act Ex.PJ was issued. The accused was arrested later on and thereafter, on completion of all the formalities of investigation and receiving the FSL report Ex.PK, the challan under Section 18 of the NDPS Act, was produced before the trial Court.

On presentation of the challan, charge under Section 18 of the NDPS Act was framed against the accused on 11.09.2001, to which he did not plead guilty and claimed trial.

The prosecution examined S.P.S. Chauhan as PW1, ASI Ishwar Singh as PW2, HC Karan Singh as PW3, Mehar Singh as PW4, Rattan Lal as PW5, C. Hardev Singh as PW6, Ashwani Maingi as PW7, the Investigating Officer, ASI Raj Kumar as PW8, C. Mam Chand as PW9, DSP Om Parkash as PW10 and Inspector Jai Singh as PW11 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. on 11.04.2001 and the entire incriminating evidence, which the prosecution produced against him, was put to him. The appellant/accused denied the allegation of the 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 18 of the NDPS Act.

Feeling dissatisfied with the judgment of conviction as well as the order of sentence dated 09.02.2005, the accused/appellant has preferred the present appeal, which was admitted on 17.02.2005 and vide order of even date, the sentence of the appellant/accused was also suspended by this Court.

Counsel for the appellant has argued that the appellant has undergone 04 months and 18 days of actual sentence out of 02 years rigorous imprisonment awarded by the trial Court and he is not involved in any other case. 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 be reduced to the period already undergone by him.

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 04 months and 18 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 18 days of actual sentence and while his sentence was suspended in the year 2005, for a subsequent 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. 04 months and 18 days.

Disposed of accordingly.

However, the fine of Rs.5,000/- is upheld. The appellant is granted 03 months time to deposit the fine, failing which the appeal shall be deemed to be dismissed without any further order.

(ARVIND SINGH SANGWAN)
JUDGE

16.07.2019
yakub

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