

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

CRA-S No.444-SB of 2005 (O&M)

Decided on: 14.05.2019

Prem 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. M.S. Nagra, 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 24.01.2005 vide which the appellant was convicted for offence punishable under Section 15 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.3,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 06 months.

Brief facts of the case are that on 20.09.2002, ASI Amanpal Singh along with other police officials were holding picket in the area of village Tarkheri, where Jhirmal Singh met them while going towards Sirhind. ASI Amanpal Singh was holding talk with said Jhirmal Singh, when accused persons came present from side of Sirhind on motorcycle of Bajaj Boxer bearing registration No.PB-11U-1078. After stopping the motorcycle, names and addresses of accused persons were

ascertained and it was suspected that some contraband is lying in the bag which was held by the accused persons in between them on the motorcycle. Accused were informed of their right of being searched in presence of a gazetted officer or a magistrate and they opted the search to be got conducted in presence of gazetted officer, qua which memo of consent was prepared. Then on wireless message being flashed Sh. Shamsher Singh Boparai, DSP, Nabha reached the spot and he too made known the right of accused of their being searched in presence of some other gazetted officer or magistrate but accused persons reposed faith in him and then on directions of DSP, search of the bag was conducted and the same was found containing chura poppy husk, out of which two samples of 250 gms. each was separated and converted into parcels. Remaining poppy husk on weighment came to 29.5 Kgs. which after putting back in the same bag converted into parcel. All the three parcels were sealed with seal of DSP bearing impression 'SS' and seal of the Investigating Officer bearing impression 'APS'. Separate sample seal chits were prepared and after use, the Investigating Officer entrusted his seal to HC Narotam Singh whereas the DSP retained his seal. Items of the case property including motorcycle were taken in possession through memo. Ruqa was sent to the Police Station and thereafter, the FIR was registered. On personal search of the accused Prem Singh nothing was recovered and on return to the Police Station, the accused persons, PWs as well as the case property were produced before the SHO Rajesh Chhibber, who after verifying the seals and the factum of recovery, affixed his own seal bearing impression 'RK' and thereafter, the case property was deposited with MHC Surinderpal Singh.

Thereafter, on completion of the investigation, challan under Section 173 of the Code of Criminal Procedure (in short 'Cr.P.C.') was presented against the accused.

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 Kulwant Rai, Jr. Assistant from the office of DTO, Patiala as PW1, SI Rajesh Chhibber, SHO as PW2, C. Mann Singh as PW3, MHC Surinderpal Singh as PW4, the Investigating Officer/SI Amanpal Singh as PW5 and HC Narotam Singh as PW6 and thereafter, the evidence of the prosecution was closed.

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, which the prosecution produced against him, was put to him to tender explanation for the same. The appellant/accused denied the allegation of prosecution and pleaded that he has been falsely implicated in the case. However, in defence evidence C. Chamkaur Singh was examined as DW1 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 15 of the NDPS Act.

Feeling dissatisfied with the judgment of conviction and order of sentence dated 24.01.2005, the accused/appellant has preferred the present appeal, which was admitted on 07.03.2005. Thereafter, the

sentence of the appellant/accused was also suspended by this Court vide order dated 14.03.2005.

Counsel for the appellant has argued that the appellant has undergone 01 month and 16 days of actual sentence out of 02 years rigorous imprisonment awarded by the trial Court. The FIR pertains to the year 2002 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 17 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 01 month and 16 days of actual sentence out of 02 years rigorous imprisonment awarded by the trial Court but opposed the submissions made by counsel for the appellant on the ground that the applicant is involved in number of other cases under the NDPS Act.

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 17 years; the appellant has undergone 01 month and 16 days of actual sentence and while his sentence was suspended in the year 2005 for a period of about more than 14 years, 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 month and 16 days. However, the imposition of fine of Rs.3,000/- is upheld. The petitioner is directed to deposit the fine, if not deposited, so far, within a period of 02 months from today.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

14.05.2019
yakub

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