

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

CRA-S No.1380-SB of 2016 (O&M)

Decided on: 20.07.2019

Sukha Ram

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Yash Pal Malik, Advocate
for the appellant.

Mr. Himmat Singh, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting-aside the judgment of conviction dated 17.02.2016 vide which the appellant was convicted for offence punishable under Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and for setting-aside the order of sentence dated 18.02.2016 whereby the appellant was sentenced to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs.10,000/- 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 11.11.2013, ASI Kishor Lal, the Investigating Officer along with HC Bhupender Singh, E/ASI Jagir Singh in a government vehicle bearing No.HR-22-C-7503 which

was being driven by C. Daya Ram, was present at Bhakhra canal bridge. In the meantime, Deshraj, Panch met him and they were talking with each other and they saw one person coming from the side of village Chuaharpur, carrying a plastic bag on his head. On seeing the police party, he turned back and tried to run. On suspicion, he was apprehended with the help of other police officials. Thereafter, on enquiry, he disclosed his name as Sukha son of Piara Ram, Bajigar, resident of Mamupur. On having suspicion that he was having some narcotic substance, the Investigating Officer served a notice under Section 50 of the NDPS Act upon him to the effect that he has some narcotic in his possession in the plastic bag and the search can be conducted in the presence of a Gazetted Officer or a Magistrate or he can be produced before them and it was his legal right. The notice was thumb-marked by the accused and attested by HC Bhupender Singh and Deshraj Panch. The accused reposed full faith in the police party. Thereafter, the Investigating Officer conducted the search of the plastic bag and found poppy straw in it. Two samples of 100 grams each from the recovered poppy husk were separated and on weighment, the residue was found to be 25 kilograms 700 grams. The samples as well as residue were converted into sealed parcels and sealed with the seal of 'KK' and were taken into police possession vide recovery memo which was thumb-marked by the accused and attested by the abovesaid witnesses. The seal after its use was handed over to HC Bhupender Singh. Thereafter, the Investigating Officer sent Ruqa through ASI Jagir Singh, on which, SI/SHO Dharambir recorded a formal FIR and made his endorsement on it. The Investigating Officer prepared a rough site

plan of the place of recovery and he arrested the accused. The accused suffered his disclosure statement which was thumb marked by the accused and attested by same set of witnesses, to the effect that he had purchased the recovered chura post from Gamdhur Singh son of Kartar Singh, Sainsi, resident of Chuaharpur for a consideration of Rs.1500/-. The Investigating Officer recorded the statements witnesses under Section 161 Cr.P.C. Thereafter, the Investigating Officer produced the accused along with the case property, witnesses and report under Section 55 of NDPS Act before the SHO Dharambir. After verifying of the facts of the case, the SHO made his endorsement under Section 57 of NDPS Act. Thereafter, the SHO directed the Investigating Officer to deposit the case property with MHC and to put accused in the police lock up. During further investigation, the co-accused Gamdhur was also arrested on 16.08.2014 and he also got recorded his disclosure statement and a memo of demarcation was prepared as per his disclosure statement. Thereafter, on completion of all the formalities of the investigation, the challan was produced 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. Rohtash as PW1, SI Dinesh Kumar as PW2, Inspector Dharamvir as PW3, HC Rajender Kumar as PW4, HC Birbal as PW5, SI Krishan Kumar as PW6, SI Malkiat Singh as PW7, ASI Kishori Lal, the Investigating Officer as PW8, HC Bhupender Singh as PW9, ASI Om Parkash as PW10 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. and the entire incriminating evidence, 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 15(b) of the NDPS Act.

Feeling dissatisfied with the judgment of conviction dated 17.02.2016 as well as the order of sentence dated 18.02.2016, the accused/appellant has preferred the present appeal, which was admitted on 07.04.2016 and vide order dated 11.05.2016, the sentence of the appellant/accused was also suspended by this Court.

Counsel for the appellant has argued that the appellant has undergone 10 months and 17 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 2013 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 05 years, therefore, by taking a lenient view, the sentence awarded to the appellant may 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 10 months and 17 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 05 years; the appellant has undergone 10 months and 17 days of actual sentence and while his sentence was suspended in the year 2016, for a subsequent period of about more than 02 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. 10 months and 17 days.

Disposed of accordingly.

However, the fine of Rs.10,000/- is upheld. The appellant is granted 03 months time to deposit the fine, if not paid, failing which the appeal shall be deemed to be dismissed without any further order.

(ARVIND SINGH SANGWAN)
JUDGE

20.07.2019
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No