

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

**CRA-S-59-SB-2005
Reserved on : 16.09.2019
Pronounced on : 17.09.2019**

Bhal Singh alias Bhalia

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Rahul Vats, Advocate
for the appellant.

Mr. Deepak Grewal, DAG, Haryana.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting aside the judgment of conviction dated 06.11.2004 as well as order of sentence dated 09.11.2004, passed by the trial Court, vide which the appellant was convicted for an offence punishable under Section 18(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*in short 'the NDPS Act'*) and he was sentenced to undergo rigorous imprisonment for a period of 05 years and to pay a fine of Rs.25,000/- and in default of payment of fine; he was directed to further undergo rigorous imprisonment for a period of 18 months.

Brief facts of the case, as per prosecution, are that on 23.12.2002, ASI Ramesh Kumar, along with other police officials, was present at T-Point Mahammadpur Rohi near bridge of Badopal canal. They saw appellant Bhal Singh coming from the side of village Mohammadpur Rohi having enquired in a cloth sheet and seeing the police party, he took left turn and sat on the ground on the pretext of urinating. On suspicion, he

was apprehended by the police party. Accused Bhal Singh was carrying a *Thela* on his right shoulder. Thereafter, Investigating Officer ASI Ramesh Kumar served him with a notice under Section 50 of the NDPS Act for the search of the said *Thela* and in reply, accused-appellant desired that search of the said *Thela* may be conducted in the presence of a Gazetted Officer of the police department. Accordingly, DSP Ram Kumar was called at the spot and in his presence, the search of said *Thela* was conducted and opium wrapped in a polythene paper was recovered. Two samples of 25 grams each were separated and converted into a sealed parcel and residue, on weighment, was found to be 1.950 Kgs. which was put in the same *Thela* and converted into a sealed parcel. Thereafter, an information was sent to the police station concerned, on the basis of which, the formal FIR was registered. Thereafter, on completion of necessary investigation, the formal chargesheet was submitted before the Illaqua Magistrate which was committed to the Court of Sessions.

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

The prosecution, in order to prove its case, examined PW1 HC Mewa Singh, PW2 DSP Ram Kumar, PW3 HC Dalip Singh, PW4 Inspector Vijay Kumar, PW5 Inspector Hoshiar Singh, PW6 HC Ram Kishan PW7 ASI Rajpal Singh and PW8 ASI/IO Ramesh Kumar and thereafter, the prosecution 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, which the prosecution produced against

him, was put to him but he denied the allegation of the prosecution and pleaded that he has been falsely implicated in the case. However, in defence, no witness was examined by the appellant.

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(b) of the NDPS Act and sentenced him to undergo rigorous imprisonment for a period of 05 years and to pay a fine of Rs.25,000/- and in default of payment of fine; he was directed to further undergo rigorous imprisonment for a period of 18 months

Feeling dissatisfied with the aforesaid judgment of conviction as well as the order of sentence, the accused-appellant has preferred the present appeal, which was admitted on 07.01.2005 and on 05.04.2005, the sentence of the appellant-accused was suspended by this Court during the pendency of the present appeal.

Counsel for the appellant has not challenged the judgment of conviction and has argued that the appellant has undergone 11 months and 29 days of actual sentence out of 05 years of rigorous imprisonment awarded by the trial Court as per the Custody Certificate filed today in 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 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 the 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 filed custody certificate and has not disputed the fact that the appellant has undergone 11 months and 29 days of actual sentence out of 05 years of 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 17 years; the appellant has undergone 11 months and 29 days of actual sentence and he has not misused the concession of suspension of sentence 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. 11 months and 29 days.

Disposed of accordingly.

However, the fine is reduced to Rs.10,000/-. The appellant is granted 03 months time to deposit the fine, failing which the appeal shall be deemed to have been dismissed without any further order.

17.09.2019

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No