

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

CRA-S-150-SB of 2016

Date of Decision:20.05.2019

Surinder Kumar

....Appellant

Versus

State of Punjab

....Respondent

CORAM:HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

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

Mr. C.L. Pawar, Sr. DAG, Punjab.

MAHABIR SINGH SINDHU, J.(Oral)

Present appeal has been filed against the judgment of conviction dated 05.01.2016 and order of sentence dated 07.01.2016 passed by learned Judge (Special Cout), Patiala, whereby the appellant was convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act of 1985') and sentenced to undergo rigorous imprisonment for one year alongwith fine of Rs. 5,000/-, in default of payment of fine to further undergo rigorous imprisonment of two months.

As per the allegations of the prosecution, the appellant was found in possession of one kilogram of Opium in the area of Bus Stop Maulviwala in the revenue estate of Village Hamjhari and an FIR No. 172 dated 26.07.2010, under Section 18 of Act of 1985 was registered at Police Station Patran. Recovery was effected in the presence of ASI Paramjit Kumar.

In order to prove the case, prosecution examined six witnesses and brought on record documentary evidence. The entire incriminating material was put before the appellant at the time of recording of his statement was recorded under Section 313 Cr.P.C., wherein he pleaded false implication and claimed innocence.

Learned Special Judge after taking into consideration the entire material available on record, convicted and sentenced the appellant in the terms mentioned in the opening of this order.

Learned counsel for the appellant instead of challenging the conviction, has confined his prayer only to the quantum of sentence. It is contended that since the occurrence had taken place on 26.07.2010 and the appellant has already undergone the actual sentence of seven months and twenty three days. He is facing prosecution for the last more than 9 years.

Learned State counsel has vehemently opposed the submissions of appellant and prayed for dismissal of the appeal.

Heard learned counsel for the parties and perused the paper book.

Undisputedly, the occurrence had taken place way back on 26.07.2010 and the appellant was convicted and sentenced by learned Special Judge, Patiala on 05.01.2016 and after his conviction he has not indulged in any criminal activity.

In view of the factual position depicted hereinabove, it is apparently clear that the appellant has turned to the main stream of the society as a law abiding citizen. Although the provisions of the Act of

1985 are very stringent and this Court should not show any undue leniency while imposing sentence, but keeping in view the fact that the appellant has already suffered the agony of protracted litigation w.e.f. 26.07.2010 and being a poor person having the liability to maintain old parents, in the opinion of this Court, these can be considered as mitigating circumstances, therefore, this Court is of the opinion that the sentence of the appellant deserves to be reduced for the period already undergone by him.

Consequently, the conviction of the appellant is upheld and the substantive sentence of imprisonment is reduced from one year for offence punishable under Section 18 of the Act, 1985, to the sentence already undergone i.e. 7 months and 23 days. Sentence qua fine remain intact. If fine not paid then the same be deposited with learned trial Court/Successor Court within two months. If he fails to deposit the same in the stipulated time then learned trial Court/Successor Court may take coercive steps to recover the same.

The appeal, as such, is partly accepted to the extent indicated above regarding reduction in quantum of sentence only.

[MAHABIR SINGH SINDHU]
JUDGE

May 20, 2019
rashmi

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no