

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

CRA-S-1424-2019 (O&M)

Date of decision : 27.08.2019

Surinder Kumar

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Sandeep Verma, Advocate for the appellant.

Mr. Bhupender Beniwal, AAG, Punjab.

ANIL KSHETARPAL, J. (ORAL)

Although, there is huge delay of 2345 days in filing the appeal, however, keeping in view the facts of the present case, this Court is of the opinion that this appeal can be disposed of at this stage only.

Appellant was convicted under Section 18(c) of the Narcotics Drugs and Psychotropic Substances Act (hereinafter to be referred as “the Act of 1985”) and sentenced to undergo rigorous imprisonment for a period of 6 years and to pay a fine of ₹25,000/-. In default of payment of fine, further undergo rigorous imprisonment for a period of one year.

As per affidavit of custody filed, appellant has already undergone substantive evidence i.e. 6 years and 1 day in the present case.

Learned counsel for the appellant submits that the appellant

is a poor person and is unable to pay the fine.

As per custody certificate, appellant has also been convicted in another case and sentenced for rigorous imprisonment for a period of 10 years and to pay a fine of ₹1,00,000/- and in default of payment of fine, further undergo rigorous imprisonment for a period of 2 years.

As per judgment of the trial Court, appellant was 23 years of age when the offence was committed. Appellant has already undergone substantive sentence as imposed by the learned trial Court. Now the only point which needs consideration is what should be the appropriate period on account of default of payment of fine.

Statute does not provides for minimum period which a convict is required to further undergo in default of payment of fine.

As per Section 18(c) of the Act of 1985, convict is liable to be sentenced with rigorous imprisonment with fine which may extend to ₹1,00,000/-. In the present case, fine of ₹25,000/- was imposed. However, considering the financial position of the appellant, further sentence in default of payment of fine to undergo for a period of one year of rigorous imprisonment, appears to be excessive. As noticed above, the appellant has already undergone substantive sentence. In such circumstances, judgment passed by the learned First Appellate Court is modified. In default of payment of fine, appellant shall have to further undergo rigorous imprisonment for a period of one month.

In view of the aforesaid fact, delay of 2345 days in filing the appeal is condoned as appellant is in custody. Application bearing CRM-

15616-2019 is allowed.

Sentence in the present case would complete once appellant undergoes rigorous imprisonment for a period of one month after completing the substantive sentence of 6 years.

In view of what has been observed above, the present appeal is partly allowed.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

27.08.2019

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No