

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

**CRA-S No.406-SB of 2010 (O&M)
Decided on: 13.02.2019**

Deep Ram

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Charanpreet Singh, Advocate
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 09.01.2010 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 10 years and to pay a fine of Rs.1,00,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 01 year.

Brief facts of the case are that on 17.8.2006 SI Balwinder Singh along with ASI Joginder Singh, ASI Pavittar Singh and other police officials in a Government vehicle bearing No.PB-10-BU 8017 were present at Jalandhar bye-pass in connection with *nakabandi* and checking and at about 02:15 PM, one vehicle Tata 909 bearing registration No.HR-37B-5203 came from the side of Basti Jodhewal. SI Balwinder Singh gave signal to stop the said vehicle, but instead of

stopping the same, its driver sped away the vehicle towards Phillaur side. Thereafter, the police party followed him in their official vehicle and the said vehicle was apprehended at Kadian turning point near Omex Mall, however, its occupants run away in different directions but only one person (i.e. Deep Ram) was caught by the police party whereas the driver succeeded in running away. The person apprehended at the spot disclosed his name as Deepa Ram @ Deepa son of Chhinda Ram, the driver of the vehicle was identified by HC Nirmal Singh as Gurdeep Ram @ Gogi son of Chhinda Ram resident of Jandiala, Police Station Banda District Nawan Shahar. On search, 07 bags were found loaded in Tata 909 vehicle. The Investigating Officer gave his identification to the accused – Deep Ram and asked him that search of the bags in the vehicle is to be conducted and in case he desire, a Gazetted Officer or a Magistrate can be called at the spot. The accused opted to be searched before a Gazetted Officer. His non-consent memo Ex.PB was recorded. Then, the Investigating officer called Mr. Dinesh Partap Singh, IPS, S.P., City-II, Ludhiana, who came there and gave his identification to the accused and asked the accused whether he wants the search of the vehicle to be conducted in his presence or in the presence of some other Gazetted Officer or a Magistrate. The accused gave consent for search of the vehicle before him vide consent statement Ex.PB. Thereafter, the bags were checked and they were found to be containing poppy husk. 02 samples of 250 grams each were separated from each bag. They were given number 1A to 7A and 1B to 7B. On weighing, the remaining poppy husk came out to be 36 kgs in each bag. The bags were given numbers 1 to 7. Their parcels were

prepared and sealed with the seals of the Investigating Officer as 'B.S' and 'D.P.S.' of Sh. Dinesh Partap Singh. Sample seal Ex.P1 was separately prepared. The case property was taken into police possession vide recovery memo Ex.PC. From the search of the vehicle one black color purse containing currency notes of Rs. 70/-, driving license of Gurdeep Ram and one sale letter was recovered which were also taken into police possession vide separate memo. The vehicle bearing No.HR-37B-5203 was also taken into police possession vide Ex.PD. Thereafter, personal search of the accused – Deep Ram was conducted vide memo Ex.PE and then, Ruqa Ex.PH was sent to the Police Station on the basis of which FIR Ex.PH/1 was registered. Site Plan Ex.PJ of the place of recovery was prepared and the accused was arrested vide memo Ex.PE. Intimation regarding arrest of the accused was also given to his wife vide memo Ex.PJ. On return to the police Station, the accused and case property was produced before ASI/ASHO Darshan Singh, who verified the facts of the case and affixed his seal bearing impression 'D.S.' Thereafter, the case property was deposited with MHC Devinder Singh with seals intact and after completion of the investigation, report under Section 173 Cr.P.C. was prepared and challan was presented 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 pleaded not guilty and claimed trial.

The prosecution examined the recovery witness i.e. ASI Joginder Singh as PW1, SI Balwinder Singh as PW2, ASI Jagpal Singh as PW3, SI Darshan Singh as PW4, HC Devinder Singh as PW5,

Harinder Pal Singh, Sales Executive, Balwant Sales Private Limited as PW6, Dinesh Partap Singh, IPS as PW7 and HC Roshan Lal as PW8 and closed the evidence.

After conclusion of the evidence of the 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 the prosecution and pleaded that he has been falsely implicated in the case. However, no defence evidence was produced by the appellant/accused.

The trial Court, after hearing learned counsel for the parties and 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 dated and order of sentence dated 09.01.2010, the accused/appellant has preferred the present appeal, which was admitted on 16.02.2010.

Counsel for the appellant has argued that the appellant has already undergone the entire sentence of 10 years rigorous imprisonment awarded by the trial Court, however, due to his poor financial constraints, he is unable to pay the fine of Rs.1 lac, whereas the trial Court vide judgment of conviction and order of sentence dated 09.01.2010, has directed the appellant to further undergo RI for a period of 01 year in default of payment of fine.

Counsel for the appellant has, thus, restricted his argument to the extent that since the appellant has already undergone the entire sentence, he is contesting the order of sentence and prays that the

sentence of the appellant for a period of 01 year awarded in lieu of payment of a fine of Rs.1 lac be reduced, considering the poor financial condition of the appellant and the fact that the appellant has his own family to support and because of the fact that he is custody for the last more than 10 years, he is not in a position to pay the fine of Rs.1 lac.

Counsel for the appellant has relied upon the judgment **“Shahejadhkan Mahebubkhan Pathan vs State of Gujarat”, 2012(4) RCR (Criminal) 684**, wherein the Hon'ble Supreme Court has held as under:-

“14. In view of the above, it is relevant to mention Section 30 of the Code which speaks about sentence of imprisonment in default of fine:

“30. Sentence of imprisonment in default of fine –

(1) The Court of a Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law:

Provided that the term-

a) is not in excess of the powers of the Magistrate under section 29;

b) shall not, where imprisonment has been awarded as part of the substantive sentence, exceed one-fourth of the term of imprisonment which the Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under Section 29.” It is clear that clause (b) of sub-section (1) of Section 30 of the Code authorizes the

Court to award imprisonment in default of fine up to 1/4th of the term of imprisonment which the Court is competent to inflict as punishment for the offence. However, considering the circumstances placed before us on behalf of the appellants-accused, viz., they are very poor and have to maintain their family, it was their first offence and if they fail to pay the amount of fine as per the order of the Additional Sessions Judge, they have to remain in jail for a period of 3 years in addition to the period of substantive sentence because of their inability to pay the fine, we are of the view that serious prejudice will be caused not only to them but also to their family members who are innocent. We are, therefore, of the view that ends of justice would be met if we order that in default of payment of fine of Rs.1.5 lakhs, the appellants shall undergo RI for 6 months instead of 3 years as ordered by the Additional Sessions Judge and confirmed by the High Court.

15. For the reasons stated above, both the appeals are partly allowed. The conviction recorded is confirmed and sentence imposed upon the appellants to undergo RI for 15 years is modified to 10 years. The order of payment of fine of Rs.1.5 lakhs each is also upheld but the order that in default of payment of fine, the appellants shall undergo RI for 3 years is reduced to RI for 6 months. Since the appellants have already served nearly 12 years in jail, we are of the view that as per the modified period of sentence in respect of default in payment of fine, there is no need for them to continue in prison. The appellants shall be set at liberty forthwith unless they are required in any other offence. It is further made clear that for any reasons, if the appellants have not completed the modified period of sentence, they will be released after the period indicated hereinabove is over.

16. The appeals are allowed to the extent mentioned above.”

Counsel for the State, on the basis of the Custody Certificate has not disputed the factual position that the appellant has already undergone the entire sentence of 10 years RI awarded by the trial Court.

After hearing the counsel for the parties and considering the limited scope in the appeal as the counsel for the appellant has not challenged the judgment of conviction on merits and also considering the fact that the appellant has already undergone the entire sentence of 10 years and his counsel restricts his argument only to the extent of reducing the sentence of 01 year awarded by the trial Court in lieu of default of payment of fine of Rs.1 lac and further considering the poor financial condition of the appellant; the appellant has his own family to support and being in custody for the last more than 10 years, he is not in a position to pay the fine of Rs.1 lac, the present appeal is ***partly allowed*** while upholding the judgment of conviction dated 09.01.2010 and the sentence awarded by the trial Court as well as the fine of Rs.1 lac, the default sentence of 01 year awarded by the trial Court to the appellant is reduced to the period of 01 month,

With the aforesaid modifications, the appeal is disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

13.02.2019
yakub

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