

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

CRA-S No.2925 of 2019 (O&M)

Decided on: 08.11.2019

Balwinder Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Kamal Narula, Advocate
for the appellant.

Mr. Jagmohan Ghumman, DAG, 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 01.10.2019, vide which the appellant was convicted for an offence punishable under Section 15(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 03 months and to pay a fine of Rs.3,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 15 days.

Brief facts of the case are that on 27.09.2015 ASI Baljinder Singh along with HC Jaswinder Singh, HC Balraj Singh, PHG Sukhmander Singh and other co-police officials was on patrolling duty in a private vehicle and when the police party was going from Danewala Chok towards G.T. Road, Abul Khurana and reached near a room situated at bus stand of village Rathrian, then one person was seen carrying a plastic bag in his right hand. On seeing the police party, he

became nervous and tried to hide behind the aforesaid room. Thereafter, on suspicion, he was apprehended and on asking, he disclosed his name as Balwinder Singh son of Gurdeep Singh resident of Gobindgarh, Police Station Guru Har Sahai. Thereafter, the Investigating Officer has told him that he has a doubt that he (the accused) is carrying some intoxicant substance in the plastic bag and thus, his search is to be conducted. The accused has been informed that he has a legal right that he can get his search conducted in the presence of some Gazetted Officer or the Magistrate but the accused reposed confidence in the Investigating Officer and separate consent memo was prepared in this regard which was signed by the accused and attested by HC Jaswinder Singh and HC Balraj Singh. Efforts were also made to join some independent witnesses but nobody met the police party. Thereafter, on search of the plastic bag, carried out by the accused, poppy husk was recovered. Thereafter, one sample of 250 gms of poppy husk was separated and converted into a parcel. On weighing, the remaining poppy husk came out to be 5 kgs and 750 gms and the same was converted into the bulk parcel. Thereafter, the Investigating Officer sealed both the parcels with the seal bearing impression 'BS' and prepared CFSL form separately. The seal after use was handed over to HC Jaswinder Singh. Thereafter, the entire case property along with the CFSL form was taken into police possession which was attested by the aforesaid witnesses. Thereafter, the Investigating Officer sent a ruqa to the police station, on the basis of which the FIR was registered by ASI Darshan Singh. The accused was arrested and his personal search was conducted. Thereafter, after spot inspection, the Investigating Officer

prepared the rough site plan with correct marginal note. On return to the police station, the entire case property along with the CFSL form was handed over to the officiating SHO Mahinder Singh. On verification, he found the case property and seals intact. Thereafter, he affixed his seal bearing impression 'MS' on the aforesaid parcels and CFSL form. Thereafter, the accused and the entire case property was produced in the Court of the Illaqa Magistrate. The samples, thereafter, were sent for analysis before the Forensic Science Laboratory and on receiving the report, the challan under Section 173 of the Code of Criminal Procedure (in short 'Cr.P.C.') was prepared and 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 did not plead guilty and claimed trial.

The prosecution examined C. Dilbagh Singh as PW1, ASI Ajmer Singh as PW2, ASI Baljinder Singh as PW3, ASI Jaswinder Singh as PW4 and ASI Mohinder Singh as PW5 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, 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. The accused opted to lead evidence in his defence but he did not examine any witness and closed his defence evidence.

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 as well as the order of sentence dated 01.10.2019, the accused/appellant has preferred the present appeal, in which notice of motion was issued on 15.10.2019.

Counsel for the appellant has argued that the appellant has undergone 02 months and 08 days of actual sentence out of 03 months rigorous imprisonment awarded by the trial Court as per the Custody Certificate dated 31.10.2019. 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. It is also submitted that the appellant is not involved in any other case.

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 02 months and 08 days of total sentence out of 03 months 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 02 months and 08 days of total sentence out of 03 months RI 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. 02 months and 08 days.

Disposed of accordingly.

However, the fine of Rs.3,000/- is upheld. The appellant is granted 02 months time to deposit the fine, failing which the appeal shall be deemed to be dismissed without any further order.

(ARVIND SINGH SANGWAN)
JUDGE

08.11.2019
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No