

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

CRA-S No.10530-SB of 2018 (O&M)

Decided on: 13.02.2019

Naresh Singh @ Buta

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. L.S. Sekhon, 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 06.12.2018 vide which the appellant was convicted for offence punishable under Section 22 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 01 year and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo imprisonment for a period of 02 months.

Brief facts of the case are that on 03.01.2015 SI Brij Mohan along with other police officials was present in the area of village Mundi Jamaal Bus Stand and while being on patrol duty in the area of Fatehgarh Panjtoor-Mundi Jamaal and Daulewala, at about 04:15 p.m. he spotted a pedestrian coming from village Mundi Jamaal, who became perplexed on seeing the police party and he was

apprehended by the police party. On enquiry, the said pedestrian disclosed his name as Naresh Singh @ Buta son of S. Gurnam Singh, Caste Rai Sikh of village Daulewala. Efforts have been made to join a public witness, however, such attempt turned out to be a futile exercise. Thereafter, SI Brij Mohan introduced himself to the accused with regard to his post and rank and expressed suspicion that accused was in possession of some contraband and thus, his search was to be conducted. Simultaneously, the accused also apprised of his legal right to get his personal search conducted from a Gazetted Officer or a Magistrate but the accused reposed faith in him. Thereafter, a consent memo was prepared which was duly thumb marked by the accused and he conducted search of the accused in presence of the witnesses. On his search, some intoxicant powder wrapped in a polythene paper, kept by the accused in the right hand side pocket of his pants, was recovered. Out of the recovered intoxicant substance, a same of 5 gms. was separated and the same was converted into a parcel and the remaining quantity of the contraband came out to be 25 gms., which too was also converted into a separate parcel. Both the parcels were sealed by SI Brij Mohan with his seal bearing impression 'BM' and sample seal on form No. 29-M separately. The seal after use was handed over to HC Jaswant Singh and both the parcels alongwith sample seal form were taken into police possession vide separate recovery memo. Thereafter, the intimation memo/ruqa was sent to the Police Station and formal FIR against the accused was registered. Spot investigation were conducted and rough sketch plan of the place of recovery was prepared. Arrest memo, personal search memo and intimation memo were also prepared.

Thereafter, ASI Nishan Singh got the inventory proceedings conducted in respect of the case property on 04.01.2015. During investigation, statement of witnesses were also recorded and the sample parcel was forwarded to the Forensic Science Laboratory, Mohali and on receipt of the Chemical Analysis Report and other formalities, 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 22 of the NDPS Act was framed against the accused, to which he pleaded not guilty and claimed trial.

The prosecution examined ASI Nishan Singh, the officiating SHO of Police Station as PW1, HC Jaswant Singh being the recovery witness of the case as PW2, the Investigating Officer SI Brij Mohan as PW3, MHC Gurmeet Singh as PW4 and SI Bhupinder Kaur, the SHO of the Police Station as PW5 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 06.12.2018, the accused/appellant has preferred the present appeal.

Counsel for the appellant has submitted that the appellant has undergone 05 months and 08 days of total sentence out of 01 year rigorous imprisonment awarded by the trial Court.

Counsel for the appellant has further argued that the entire investigation was carried out by the same Investigating Officer. It is further submitted that the FIR pertains to the year 2015 and the appellant is not involved in any other case. It is also 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 04 years, therefore, by taking a lenient view, the sentence awarded to the appellant be reduced to the period already undergone by him.

Counsel for the State, on the basis of the Custody Certificate, has not disputed the fact that the appellant has undergone 05 months and 08 days of total sentence out of 01 year 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 04 years; the appellant has undergone 05 months and 08 days of total sentence and he is not involved in any other case 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. 05 months and 08 days.

Since, the recovery of fine awarded to the appellant has been stayed by this Court, the finding recorded by the trial Court with regard to payment of fine stands affirmed. The amount of fine shall be deposited by the appellant before the trial Court within a period of 02 months from today, failing which, the appellant shall have to undergo the sentence so awarded in the default clause in respect of payment of fine.

The appellant be released forthwith, if he is not required in any other case.

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

(ARVIND SINGH SANGWAN)
JUDGE

13.02.2019
yakub

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