

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-4658-SB of 2018

DATE OF DECISION: APRIL 3, 2019

HEM RAJ @ KAKA

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ.

PRESENT: MR. SACHIN LUTHRA, ADVOCATE
LEGAL AID COUNSEL, FOR THE APPELLANT.

MR. HARSIMAR SINGH SITTA, AAG, PUNJAB.

MANOJ BAJAJ, J.(ORAL)

CRM-43567-2018

This is an application for condonation of delay of 534 days in filing the appeal. It has been submitted in the application that after the applicant-appellant was convicted and sentenced, due to financial constraints, he was unable to file an appeal. It is only after the applicant-appellant approached the High Court Legal Service Authority to appoint a counsel to defend him, the appeal could be filed and the abovesaid delay has caused.

Since the only remedy available under the criminal law is to prefer an appeal against the impugned order of conviction and sentence, therefore, accepting the aforesaid circumstances for the delay, the application is allowed and the delay of 534 days in filing the appeal is condoned.

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The appeal has been preferred by the appellant against the judgement dated 21.4.2017, passed by the Judge, Special Court, Jalandhar, vide which he was convicted under the Section 22(b) of the NDPS Act and sentenced to undergo R.I. for 4 years and to pay a fine of ₹10,000/- and in default of payment fine, to undergo a further period of R.I. for 3 months.

A perusal of the case file shows that the FIR in the present case i.e., FIR No.64 was registered on 17.5.2015, under Section 22 of NDPS Act, registered at Police Station Bhogpur, Jalandhar. The appellant was convicted and sentenced way-back on 21.4.2017 and since then no appeal had been preferred and the same has been filed only in December, 2018 through legal aid counsel appointed by the High Court Legal Services Authority. Further, a perusal of the custody certificate filed by the State shows that the appellant has undergone total custody period of 3 years 9 months and 10 days on 28.02.2019, meaning thereby that as on today, i.e. on 3.4.2019, the appellant has undergone 3 years 10 months and 13 days out of the total sentence of 4 years.

Learned counsel for the appellant submits that as the appellant has suffered a substantial period of incarceration, therefore, without challenging the merits of the case, he confines his prayer with regard to reduction in sentence awarded to the appellant.

Keeping in view the observations made above by the Court, the period undergone by the appellant and the fact that learned counsel for the petitioner has confined his prayer only to reduction of sentence awarded to

the appellant, it would be just and proper if the sentence of the appellant is modified to the one already undergone by him.

Therefore, while upholding the conviction of appellant Hem Raj @ Kaka passed by the Special Court, Jalandhar vide its order dated 21.4.2017 in FIR No.64 dated 17.05.2015 under Section 22 of the NDPS Act, 1985, registered at Police Station Bhogpur, Jalandhar, the sentence of 4 years awarded by the trial Court is modified to the period already undergone by him. The fine and default clause will remain intact. He be set at liberty forthwith, if his custody is not required in connection with any other case.

Appeal stands disposed off.

April 3, 2019
Gulati

(MANOJ BAJAJ)
JUDGE

Whether Reportable : Yes/No

Whether Speaking/Reasoned : Yes/No