

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

CRA-S-2123-SB-2004 (O&M)

Date of decision: 18.02.2020

Surender Kumar

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. Tapan Kumar, Advocate,
for Mr. J.V. Yadav, Advocate,
for the appellant.

Mr. Vikrant Pamboo, DAG, Haryana.

Jitendra Chauhan, J. (Oral)

The instant appeal has been filed assailing the judgment of conviction dated 30.09.2004 and order of sentence dated 05.10.2004 (hereinafter referred to as the impugned judgment'), passed by learned Judge, Special Court, Rewari (for short, 'the trial Court'), thereby, convicting the appellant under Section 27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') and sentencing him to undergo rigorous imprisonment for a period of 06 months and to pay fine of Rupees five thousand with default stipulation.

Learned counsel contends that the mandatory provisions of Sections 42 and 50 of the NDPS Act have not been complied with in the instant case. No independent witness was joined in the recovery

proceedings. There is a delay of 20 days in sending the sample to the FSL. Lastly, it is argued that the appellant is not a previous convict, therefore, in case, the Court is not convinced by the arguments advanced, a lenient view in the matter of sentence be taken.

On the other hand, learned State counsel submits that the recovery was effected from the conscious possession of the appellant. All the mandatory provisions of law have been complied with. The police did not have any motive or *mala fide* to falsely implicate the appellant.

Heard.

In this case, the appellant was apprehended from the spot carrying 8 gms. *Charas* in the right pocket of his kurta. On further search, three *Sulfi* along with *Safi* were also recovered. The non-joining of any independent witness cannot be said to be fatal in this case as it was a chance recovery. As far as the seals are concerned, it is apparent from the perusal of FSL report, Ex.PX that three seals were found intact on the sample. All the officials witnesses have fully supported the case of the prosecution. The discrepancies or contradictions, as projected by the appellant are minor and deserve to be ignored. Moreover, no *mala fide* has either been alleged or proved against the police. Therefore, this Court is of the considered view that the judgment of conviction has been rightly recorded by learned trial Court and the same does not call for any interference.

As regards the quantum of sentence, it is to be noted that the appellant is not a previous convict and he has already suffered the agony of protracted trial. Therefore, the sentence of imprisonment of the appellant is reduced from to the period already undergone by him, subject to payment of

enhanced fine of ₹25,000/- to be deposited with the Poor Patients Fund of PGIMS, Rohtak, within 45 days from the date of receipt of a certified copy of this judgment, failing which, the instant appeal shall be deemed to be dismissed without further notice. The fine already imposed by learned trial Court shall remain unchanged. The appellant is stated to be on bail. His bail bonds shall remain discharged.

Disposed of.

18.02.2020
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No