

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

Decided on: 26.02.2020

1. CRA-S No.518 of 2019 (O&M)

Frank

....Appellant

Versus

State of Punjab

....Respondent

2. CRA-S No.554 of 2019 (O&M)

Chinnoya

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Ms. G.K. Mann, Advocate
for the appellant (in CRA-S No.518-SB of 2019).

Mr. Abhishek Chha, Advocate
for Ms. Garima Sharma, Advocate
for the appellant (in CRA-S No.554-SB of 2019)

Mr. M.S. Nagra, AAG, Punjab.

ARVIND SINGH SANGWAN, J.

On oral request made by counsel for the applicants/appellants, the main appeals are taken up today for hearing as the Lower Court record is received.

Prayer in these appeals is for setting-aside the judgment of conviction as well as the order of sentence dated 07.02.2019, vide which the appellants namely Frank and Chinnoya were convicted for an offence punishable under Sections 21 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and the

accused/appellant namely Chinnoya was also convicted for offence punishable under Section 14 of the Foreign Act, 1946 for staying in India beyond the expiry of permissible period provided in his Visa and they were sentenced to undergo rigorous imprisonment for a period of 05 years and to pay the fine and in default of payment of fine to further undergo rigorous imprisonment for a period of 05 months.

Brief facts of the case are that on 30.05.2018, ASI Sukhwinder Singh along with ASI Kamaljit Singh and other police officers were present in the area of S.A.S. Nagar, Mohali near Gurudwara Amb Sahib in order to search the drug peddlers and at about 10:00 PM, a secret information was received that two Nigerians namely Frank and Chinnoya have brought heroin from Delhi and are looking for the customers for its sale in Phase XI, S.A.S. Nagar Mohali. Thereafter, ASI Sukhwinder Singh along with other police officers immediately reached in Phase XI, S.A.S. Nagar, Mohali and placed barricade there and started checking. Thereafter, at about 01:30 PM, two Nigerians came from the Chowk of Phase XI, S.A.S. Nagar Mohali on foot and they were apprehended at the spot and they disclosed their names as Frank and Chinnoya. ASI Sukhwinder Singh disclosed his identity to them and informed them in English language that he has a suspicion that they are in possession of some Heroin and he wants to search the same and the accused/appellants were also apprised of their legal right to get their search conducted in the presence of some Gazetted Officer or the Magistrate. Thereafter, both the accused showed their desire to get themselves searched in the presence of a Gazetted

Officer and in this regard, dissent memo of both the accused was prepared. Thereafter, the Investigating Officer called Hardeep Singh, PPS, the then DSP of Special Task Force, S.A.S. Nagar and requested him to come to the spot. The DSP of Special Task Force, S.A.S. Nagar reached at the spot and disclosed his identity to the accused and he also apprised the accused that they have a legal right to get their search conducted from any other Gazetted Officer or Magistrate but both of them reposed confidence in him. Thereafter, the DSP Hardeep Singh prepared their consent memo in English language and the search of the accused Frank was conducted by ASI Sukhwinder Singh on the direction of DSP Hardeep Singh and from the right pocket of the lower worn by him, Heroin wrapped in polythene bag was recovered and on weighing the same, it was found to be of 200 grams. He prepared the parcel of the same and affixed the seal bearing impression 'SS' on the same. Thereafter, the search of the accused Chinnoya was conducted and from the right pocket of Capri worn by him, Heroin wrapped in a polythene bag was recovered and on weighing the same, it was also found to be of 200 grams. ASI Sukhwinder Singh also prepared the parcel of the same and affixed the seal bearing impression 'SS' on the same. The said parcels were also sealed by DSP Hardeep Singh with his seal bearing impressions 'HS'. Sample seal was also prepared. The seal after use was handed over to ASI Kamaljeet Singh. The Heroin was taken into police possession vide separate recovery memo. The accused could not show any valid documents/passports regarding their stay in India. Thereafter, a ruqa was sent by ASI Sukhwinder Singh through

HC Gurnaib Singh for registration of the FIR on the basis of which, a formal FIR was registered. Thereafter on the next day i.e. 31.05.2018, the accused were produced before the trial Court/Illaq Magistrate along with the articles. The contraband was later on deposited with MHC and on receipt of the report of the Chemical Examiner and on completion of the investigation, challan against the accused was presented before the trial Court.

On presentation of the challan, charge under Sections 21 and 29 of the NDPS Act and Section 14 of the Foreign Act, 1946 was framed against the accused, to which they did not plead guilty and claimed trial.

The prosecution examined DSP Hardeep Singh as PW1, HC Dharminder Singh as PW2, SI Ram Darshan as PW3, ASI Sukhwinder Singh, the Investigating Officer as PW4, ASI Kamaljit Singh as PW5, ASI Narinder Singh as PW6, Gurpreet Singh as PW7, ASI Manjit Singh as PW8 and thereafter, the prosecution closed its evidence.

After the conclusion of the evidence of prosecution, the statement of appellants/accused was recorded under Section 313 Cr.P.C. and the entire incriminating evidence, was put to them but they denied the allegation of the prosecution and pleaded that they have been falsely implicated in the case. In defence evidence, the accused tendered into evidence the copies of their passports as Ex.DA and Ex.DB and thereafter, closed the 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 Sections 21 and 29 of the NDPS Act and the accused/appellant namely Chinnoya was also convicted for offence punishable under Section 14 of the Foreign Act, 1946.

Feeling dissatisfied with the judgment of conviction as well as the order of sentence dated 07.02.2019, the accused/appellants have preferred the present appeal.

Counsel for the appellants have argued that the appellants do not intend to challenge the judgment of conviction dated 07.02.2019 and further argued that the appellants have undergone 01 year, 08 months and 23 days of total sentence out of 05 years rigorous imprisonment awarded by the trial Court as per the Custody Certificate dated 26.02.2020. It is further submitted that the FIR pertains to the year 2018 and the appellants are foreign nationals and have to return back to their country and they are the first offender, therefore, by taking a lenient view, the sentence awarded to both the appellants may be reduced to the period already undergone by them. It is also submitted that the appellants are not involved in any other case of NDPS Act. The learned counsel for the appellants has further submitted that if the sentence is reduced, the appellants will leave the country and will not oppose their deportation and will manage to arrange air ticket to fly back to their country.

Counsel for the appellants have 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 appellants 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 appellants 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. The counsel for the appellants undertake that the appellants may be deported to their country after completing the formalities.

Counsel for the State has filed the Custody Certificate today in the Court and has not disputed the fact that the appellants have undergone 01 year, 08 months and 23 days of total sentence out of 05 years rigorous imprisonment awarded by the trial Court.

After hearing the counsel for the parties and going through the Lower Court record, I uphold the judgment of conviction passed by the trial Court, however, considering the fact that the appellants have undergone 01 year, 08 months and 23 days of substantive sentence and also in view of the fact that they are foreign nationals, the present appeals are ***partly allowed*** and the sentence awarded to both the appellants namely Frank and Chinnoya is reduced to the period already undergone by them i.e. 01 year, 08 months and 23 days and till their

deportation, the appellants will not be released from the Jail till the emigration and the deportation proceedings are completed by Bureau of Immigration or the Senior Superintendent of Police, Mohali under Foreigner Regional Registration Office and after due verification, both of them will be taken to airport by a team, authorized by the Senior Superintendent of Police/F.R.O., Mohali, to hand over their custody to the concerned Emigration Authorities.

Disposed of accordingly.

The Senior Superintendent of Police/F.R.O., S.A.S. Nagar, Mohali is also directed to ensure the deportation of both the appellants and to keep them in jail custody till the time the formalities of their deportation are completed and they are handed over to Emigration Authorities along with their passports which will be released from the custody of the Court/police in due course.

(ARVIND SINGH SANGWAN)
JUDGE

26.02.2020
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No