

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

**CRA-S No.1195 of 2020 (O&M)
Decided on: 17.07.2020**

Vinod Kumar @ Soni

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Ranjeet Kumar, Advocate for the appellant.

Mr. Amit Mehta, Sr. DAG, Punjab.

ARVIND SINGH SANGWAN, J.

CRM-16587-2020

Prayer in this application is for condoning delay of 34 days
in filing the appeal.

Heard.

In view of averments made in the application, the same is
allowed and delay of 34 days in filing the appeal stands condoned.

CRA-S-1195-2020 (O&M)

Prayer in this appeal is for setting-aside the judgment of
conviction as well as the order of sentence dated 19.12.2019, passed by
the Judge, Special Court, Sangrur vide which the appellant was
convicted for an offence punishable under Section 22 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
01 year and to pay a fine of Rs.8,000/- and in default of payment of fine
to further undergo rigorous imprisonment for a period of 03 months.

Brief facts of the case are that on 28.07.2018 at about

04:30 PM, the police party headed by ASI Hardev Singh alongwith ASI Jagwinder Singh and other cops while on patrol duty in order to search for miscreants were present at car parking of Railway Station Sangrur, where a person carrying a glazed envelope in his right hand, was spotted, who was coming from the side of Railway Station, Sangrur and he on seeing the police party got perplexed and tried to turn back, after throwing the glazed envelope. On suspicion, ASI Hardev Singh intercepted him and on enquiry, he disclosed his name as Vinod Kumar @ Soni son of Nachattar Singh resident of Ward No.50 near Gurudwara Mohalla Kokomajri Sunam, Police Station City Sunam, District Sangrur. Thereafter, ASI Hardev Singh introduced him to the accused about his rank and posting and then picked up the glazed envelope, which was found containing 10 strips of 20/20 tablets each of Lomotil Loto 317081, MFG, 11/2017, Exp. Date 10, 2020, total 200 tablets. Efforts were also made to join independent witnesses, however, they showed their hardships. Thereafter, the parcel of the contraband was prepared and sealed bearing seal impression 'HS' and the same was taken into police possession and the seal, after use, was handed over to ASI Jagwinder Singh. On personal search of the accused, Rs.100/- currency note was recovered, which was also taken into police possession vide separate memo. Thereafter, a written message was sent through HC Manjit Singh for the purpose of registration of the FIR. The spot was inspected and site plan was prepared thereafter. The personal search memo and arrest-cum-intimation memo were also prepared. The statement of the witnesses under Section 161 Cr.P.C. was also recorded. Thereafter, the parcel of the contraband was produced before the

SI/SHO, City Sangrur, who after verifying the same, affixed his own seal impression and the parcel was deposited with the police malkhana. Thereafter, on 10.08.2018, the accused was produced before the Chief Judicial Magistrate, Sangrur along with the articles and Form No.29, who broke open the seal and affixed her own seal bearing impression 'AM'. The contraband was later on deposited with MHC and on completion of the investigation, challan against the accused 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 did not plead guilty and claimed trial.

The prosecution examined MHC Rupinderpal Singh as PW1, ASI Harnek Singh as PW2, ASI Hardev Singh as PW3, ASI Jagwinder Singh as PW4, Inspector Charandeep Singh as PW5 and thereafter, the prosecution closed its 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, was put to him but he denied the allegation of the prosecution and pleaded that he has been falsely implicated in the case. In defence evidence, the accused opted to lead evidence, however, he has not examined any witness and 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 Section 22 of the NDPS Act.

Feeling dissatisfied with the judgment of conviction as

well as the order of sentence dated 19.12.2019, the accused/appellant has preferred the present appeal.

Counsel for the appellant has argued that the appellant do not intend to challenge the judgment of conviction dated 19.12.2019 on merits and further submitted that the appellant has undergone about 09 months of actual sentence out of 01 year rigorous imprisonment awarded by the trial Court. It is further submitted that the FIR pertains to the year 2018 and the appellant is a very poor person and this appeal has been filed through legal aid counsel. Counsel for the appellant has further argued that the appellant has his own family to support and he is the first offender, 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 of NDPS Act.

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 has not disputed the fact that the appellant has undergone about 09 months of actual 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 undergone about 09 months of substantive sentence and also in view of the fact that he is a very 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. 09 months.

However, keeping in view the fact that the appellant is a very poor person and this appeal has been filed through legal aid counsel, the imposition of fine of Rs.8,000/- is also reduced to Rs.4,000/-.

The appellant is directed to deposit the fine of Rs.4,000/-, if not deposited so far, within a period of 03 months from today.

Disposed of accordingly.

The Registry is directed to issue release warrants of the appellant/accused, at the earliest.

(ARVIND SINGH SANGWAN)
JUDGE

17.07.2020

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Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No