

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

CRA-S-3071 of 2019

DATE OF DECISION :- February 25, 2020

Asif Khan

...Appellant

Versus

Union Territory, Chandigarh

...Respondent

CORAM: HON'BLE MR. JUSTICE H.S. MADAAN

Present:- Mr. Garuav Gogna, Advocate for the appellant

Mr. Sumit Jain, Addl. P.P., U.T. Chandigarh.

At request of learned counsel for the appellant, the appeal is taken up for final hearing today.

Briefly stated the fact of the case are that accused Asif Khan faced trial by Judge, Special Court, Chandigarh in case F.I.R. No. 211 dated 8.7.2017 for an offence under Section 18 of the NDPS Act registered with Police Station Sector 36, Chandigarh on the allegation that on 8.7.2017 at about 7.00 P.M. in the area of Sector 42, Chandigarh near the drain when accused was intercepted while coming on Bullet Motorcycle, he had fallen down and was apprehended. A polythene bag which he was carrying in his right pocket of the pant was found to contain 210 gms. of opium. The accused could not produce any licence or permit for possession of the contraband. Sample was drawn out of the recovered opium. The contraband

recovered was taken into possession vide a seizure memo. Usual proceedings were carried out.

The accused was arrested in this case. F.I.R. was got registered. During the course of investigation the sample was sent to CFSL and on receipt of the report the accused was challaned.

On conclusion of trial vide judgment dated 25.9.2019 he was convicted for offence under Section 18 of the NDPS Act and vide order of the even date he was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.15,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of three months.

Feeling aggrieved, he has preferred an appeal before this Court, notice of which has been given to the State which is being represented by Additional P.P., U.T. Chandigarh.

I have heard learned counsel for the appellant and learned State counsel besides going through the record.

In the very beginning, learned counsel for the appellant has contended that he does not challenge the impugned judgment as far as conviction of the appellant is concerned but he prays for taking a lenient view in the matter for the reason that petitioner is aged about 29 years. He is the only earning member in the family comprising his old mother, wife and minor daughter. He does not have any previous criminal record and contraband recovered also amounts to small quantity. He has already undergone a period of more than six months in this case.

Though learned State counsel is opposing the request for taking

a lenient view but I find that considering the facts and circumstances of the case, the quantity of contraband recovered from the accused and mitigating circumstances explained by learned counsel for the appellant in the light of the fact that as per custody certificate filed by the State counsel the appellant has already undergone a period of 6 months and 8 days out of substantive sentence of 1 year awarded to him, it would be in the fitness of things and interest of justice if sentence of imprisonment is reduced to one already undergone by him in this case while keeping the fine part intact.

Therefore, the appeal is allowed partly, inasmuch as it is dismissed as regards the conviction part but is allowed with regard to the sentence part as detailed above.

Petitioner Asif Khan, who is stated to be in custody is ordered to be released forthwith, if not required in any other case.

(H.S. MADAAN)
JUDGE

February 25, 2020
p.singh

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