

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

**CRA-S No.3719 of 2019 (O&M)
Decided on: 15.01.2020**

Amrik Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vijay Lath, Advocate
for the appellant.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this appeal is for setting-aside the judgment of conviction dated 20.11.2019 as well as the order of sentence dated 21.11.2019, vide which the appellant was convicted for an offence punishable under Section 15(b) 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 03 months and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 01 month.

Brief facts of the case are that on 19.07.2018, ASI Jit Ram of Police Station Kiratpur Sahib along with HC Jujhar Singh, C. Kulvir Singh and C. Jasbir Singh went for patrolling on a private vehicle bearing No.CH-03-R-1829. They were present in the area of Baba

Budan Shah turning in connection with checking duty and at about 04:30 PM from the side of Masewal, one person was seen coming on Vespa Scooter bearing No.PB-12-P-2132 along a bag (Jhola) which was hanged with the hook of the scooter. On suspicion, he was stopped by ASI Jit Ram and on interrogation he apprised the accused – Amrik Singh that he is suspecting that he is carrying some intoxicant substance with him and his search is to be conducted. ASI Jit Ram also apprised Amrik Singh about his legal right to get his search conducted either before the Magistrate or the Gazetted Officer, but he reposed confidence in him and thereafter, the consent memo Ex.PW7/A of the accused was prepared and on search of the bag (Jhola) carried out by the accused, 05 Kgs. poppy husk was recovered. The whole contraband was put into a parcel and sealed by ASI Jit Ram with his seal bearing impression ‘JR’ and he prepared the sample of the seal and handed over the same to HC Jujhar Singh. He took into possession the case property vide memo Ex.PW7/B. Thereafter, ASI Jit Ram prepared a ruqa and sent the same to Police Station through C. Jasvir Singh for registration of the case, on which FIR Ex.PW3/B was registered. ASI Jit Ram prepared the site plan Ex.PW7/B of the place of recovery and thereafter, arrested the accused – Amrik Singh vide arrest memo Ex.PW7/C and personal search memo Ex.PW7/D. The scooter of the accused was also taken into possession vide memo Ex.PW7/E. Later on, the accused was produced before the SHO/ASI Mohan Lal, who verified the facts from the accused and witnesses and thereafter, he sealed the case property with his seal mark ‘ML’. Thereafter, the accused was 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 Section 15 (b) of the NDPS Act was framed against the accused, to which he did not plead guilty and claimed trial.

The prosecution examined ASI Baljinder Singh as PW1, Manpreet Kaur, Date Entry Operator in the office of SDM-cum-Registering Authority, Ropar as PW2, ASI Mohan Lal as PW3, ASI Suridner Singh as PW4, ASI Pardeep Kumar as PW5, HC Gurcharan Singh as PW6, HC Jujhar Singh as PW7, ASI Jit Ram, the Investigating Officer as PW8, C. Gurmit Singh as PW9 and ASI Sohan Singh as PW10 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 tendered into evidence a copy of the receipt Mark-A and copy of application Mark-B 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 Section 15(b) of the NDPS Act.

Feeling dissatisfied with the judgment of conviction dated 20.11.2019 as well as the order of sentence dated 21.11.2019, 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 20.11.2019 and further argued that the appellant has undergone 02 months and 21 days of actual sentence out of 03 months rigorous imprisonment awarded by the trial Court as per the Custody Certificate dated 15.01.2020. It is further submitted that the FIR pertains to the year 2018 and the appellant is a poor person and 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 filed the Custody Certificate today in the Court and has not disputed the fact that the appellant has undergone 02 months and 21 days of actual sentence out of 03 months rigorous imprisonment awarded by the trial Court and the appellant has already deposited the fine of Rs.5,000/-.

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 02 months and 21 days of substantive sentence and also in view of the fact that he is a 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. 02 months and 21 days.

Disposed of accordingly.

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

(ARVIND SINGH SANGWAN)
JUDGE

15.01.2020
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No