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

CRA-D-932-DB-2013 (O&M)

Date of decision : 30.07.2021

Subash Chander

...Appellant

Versus

Intelligence Officer, Directorate of Revenue Intelligence

...Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Manoj R. Sharma, Advocate for the appellant.

Mr. Sanjay Bansal, Sr. Standing Counsel with
Mr. Amit Parshad, Advocate for the respondent.

Mr. Sandeep Vermani, Addl. A.G. Punjab.

(Through Video Conferencing)

AJAY TEWARI, J.

CRM-7537-2020

1. This application has been filed for grant of suspension of sentence of the applicant-appellant, during the pendency of the appeal.

2. With the consent of learned counsel for the parties, the main appeal is taken on board today itself for final disposal.

Main appeal

1. This appeal has been filed against the judgment/order dated 13.06.2013 passed by the learned Special Court, Pathankot in case No.7

dated 26.03.2009 registered under Sections 21, 23, 25, 28, 29 and 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the Act of 1985”) at Police Station Intelligence Bureau, convicting the appellant for having been found in possession of 10 kgs of heroin and the sentence awarded to him is as under:-

<i>Name of the convict</i>	<i>Under Section</i>	<i>Sentence</i>
Subash Chander son of Anant Ram	21 of the NDPS Act	Rigorous imprisonment for a period of 20 years with fine of Rs.2,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of five years.
	23 of the NDPS Act	Rigorous imprisonment for a period of 20 years with a fine of Rs.2,00,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of five years
	25 of the NDPS Act	Rigorous imprisonment for a period of five years

It was ordered that all the sentences shall run concurrently.

2. The brief facts of the prosecution case are that on 01.10.2008, the respondent/complainant got specific information that narcotic drugs were going to be transported from Jammu to Pathankot in a white colour TATA 207 bearing registration No.JK-02-AB-9458. Thereafter, on that day, at 0600 hrs, Directorate of Revenue Intelligence (hereinafter to be referred as “DRI”) Officials laid a naka at Madhopur and intercepted the aforesaid vehicle coming from Jammu side. The said vehicle was being driven by Subash Chander-appellant and identified during trial by Kamaljit Singh, Senior Intelligence Officer (PW1). No other person was found in the said vehicle. On persistent queries by DRI Officers, appellant disclosed that he

was carrying narcotics drugs in the Stepney (spare wheel) as fitted beneath the vehicle on rear side. To ensure safe search of the vehicle and personal search of the appellant, the vehicle as well as appellant were taken to the office of Customs Preventive Division, Pathankot situated at Mission Road, Pathankot by the DRI officers. The DRI Officers served a notice under Section 50 of the Act of 1985 upon the appellant. As desired by the appellant, his personal search and that of the vehicle were conducted by Ramesh Sharma, Senior Intelligence Officer, DRI Amritsar (Gazetted Officer) in the presence of independent witnesses. On conducting of personal search, Indian currency worth Rs.3600/- was recovered from his wallet and one old and used mobile phone make Nokia Model 1600 having SIM number 94173-31775 and another SIM card bearing number 89918-80000 01494 3329 3 of Vodafone company for mobile number 99887-34001 were also recovered from him. Thereafter, on search of stepney i.e. spare wheel of the vehicle, 10 packets wrapped with black colour adhesive tape were recovered. All the 10 packets were marked as A to J by the DRI Officers and the gross weight of the same were found to be 11.020 kilograms. The DRI Officers cut open all the packets one by one and those packets found to be containing of white granules/powder having a pungent smell. A pinch of powder from all the packets one by one was taken and it was tested with the help of Drug Testing Kit which gave positive indication for the heroin. Hence, the DRI Officers seized 10 kilograms heroin valuing Rs.32,50,000/- alongwith packing material under Section 42 of the Act of 1985. The contents of each 10 packets were re-packed and the same were transferred to the same packets. All the 10 packets containing heroin were

put in white cloth bags and were stitched separately and taken into possession. The aforesaid vehicle was also taken into possession by the DRI Officers. Statement of the accused was recorded wherein he admitted the manner and factum of recovery and seizure and other incriminating facts. The appellant was arrested formally and thereafter, DRI Officer filed a complaint in the Court. Having convicted, the accused filed present appeal.

3. Learned counsel for the appellant submits that there is no other case against the appellant under the Act of 1985 except the present one and confines his prayer to the reduction of the sentence awarded to the appellant to that which he has already undergone.

4. Mr. Sanjay Bansal, Sr. Standing Counsel for the respondent, submits that this is the case where no leniency is called for.

5. Today, custody certificate dated 29.07.2021 by way of affidavit of Mr. Harbhajan Singh, PPS, Deputy Superintendent Central Jail, Hoshiarpur, on behalf of State has been filed and the same is taken on record. Copy supplied to the counsel opposite. As per custody certificate, the appellant has undergone actual sentence of 10 years, 10 months and 29 days out of 20 years of rigorous imprisonment.

6. We have considered the submissions of learned counsel for the parties and perused the records.

7. Keeping in view the totality of circumstances, we uphold the judgment of the trial court with regard to the conviction of the appellant. However, looking to all the facts and circumstances of the present case including the fact that the appellant is a poor person and no other case of the Act of 1985 is pending against him, we find that the ends of justice will be

sub-served by reducing the sentence from 20 years to 14 years. The conviction and fine of the appellant is maintained.

8. With such modification in the sentence, the appeal stands disposed of as indicated above.

9. Since the main case has been decided, the pending miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIKAS BAHL)
JUDGE

30.07.2021

Pawan

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No