

CRM-34919-2021 in/and
CRA-S-2784-SB-2012

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(218)

CRM-34919-2021 in/and
CRA-S-2784-SB-2012
Date of decision: - 13.12.2021

Daljit Singh

....Appellant

Versus

State of Punjab

.....Respondent

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. A.S. Barnala, Advocate, for the applicant-appellant.

Mr. Sarabjit S. Cheema, Assistant Advocate General, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (ORAL)

CRM-34919-2021

This is an application under Section 482 Cr.P.C. for fixing
the actual date of hearing in the main appeal.

Notice in the application was issued to the respondent-State.

Learned State counsel has submitted that he has no objection
in case the main appeal is taken up for hearing today itself.

Keeping in view the averments made in present application
as well as the fact that the respondent-State has no objection for the grant
of prayer made in the present application, the same is allowed and the
main appeal is taken up for hearing today itself.

CRA-S-2784-SB-2012

Challenge in the present appeal is to the judgment of

conviction dated 04.09.2012 and order of sentence dated 06.09.2012, vide which the Judge, Special Court, Barnala, had convicted the appellant under Section 18(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'NDPS Act') and had sentenced him to undergo rigorous imprisonment for a period of 1½ years 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 one month, in FIR No.116 dated 07.08.2011, registered under Section 18 of the NDPS Act, at Police Station Tapa, District Barnala.

Brief facts of the prosecution case are that on 07.08.2011 ASI Iqbal Singh of Police Station, Tapa, along with other police officials, was present at the bridge situated on Tapa-Dhilwan road to keep a check on suspicious elements and the present appellant came there on a motorcycle make Hero Honda CD Deluxe, which was black in colour and was without a registration number and on seeing the police party, he tried to turn back and was apprehended on suspicion. After interrogation in the presence of private witness Ram Singh, appellant was informed that it was suspected that there was some intoxicant material in his possession and his search was to be conducted and he was informed about his legal right to opt for his search to be conducted by a Magistrate or a Gazetted Officer and he reposed confidence in a ASI Iqbal Singh and opted for his search to be done by him and also executed his consent memo as Ex.P1. The appellant was carrying a plastic *jhola* in his right hand, which was searched and opium wrapped in a glazed paper was recovered from it.

Two samples of 10 grams each, were separated into two separate parcels and the residue came out to be 280 grams which was put into a third plastic container and its parcel was also prepared. Thereafter, all parcels were sealed by ASI Iqbal Singh with his seal IS. Seizure memo P2 was prepared. Ruqa Ex.P8 was sent to the police station on the basis of which FIR (Ex.P8/A) under Section 18 of the NDPS Act was registered. The case property was deposited with MHC Balwinder Singh and a special report Ex.P10 under Section 57 of the Act was forwarded to the senior police officer and thereafter, the case property was produced before the Judicial Magistrate by way of submitting inventory report Ex.P11. Judicial Magistrate authenticated the same by putting his signatures on the parcels and by way of passing the authentication order Ex.P11/A. During investigation, the original owner of the motorcycle was also joined in the investigation. Sample parcel and sample seal were sent to the office of the Chemical Examiner and on receipt of the said report Ex.PZ, accused was challaned to face trial under Section 18 of the NDPS Act. After investigation, the charges were framed and during trial as many as five witnesses were examined.

PW-5 ASI Iqbal Singh, was the investigation Officer and PW-2 HC Bhola Singh, who was the witnesses of the recovery, recounted the entire version of the prosecution, which led to the recovery of 300 grams of opium from the possession of the appellant. PW-3 HC Gurmail Singh also deposed that he had taken the sample parcel and sample of seal to the office of the Chemical Examiner. PW-1 HC Balwinder Singh

deposed that the case property remained with him before production before the Magistrate and also stated that the sample parcel and sample seal was sent to the office of Chemical Examiner and till the time the material remained with them, the same was not tampered. PW-4 Inspector Sanjiv Singla deposed that the case property was produced before him.

After the conclusion of the prosecution evidence, the statement under Section 313 Cr.P.C. of the appellant was recorded and the entire incriminating evidence was put to him. The Judge Special Court, Barnala after considering the evidence and all the documents on record, convicted the appellant for having been found in conscious possession of 300 grams of opium without holding any valid permit or licence, under Section 18(c) of the NDPS Act and convicted him as indicated herein above. It is against the said judgment that the present appeal has been filed.

During the course of arguments, learned counsel for the appellant has submitted that although, he does not wish to challenge the conviction of the appellant under Section 18(c) NDPS Act but he would be satisfied in case a lenient view is taken with respect to the sentence which has been awarded to the appellant. In this regard, he has submitted that the FIR in the present case is of the year 2011 and thus, the appellant has suffered agony of trial/bail/appeal for all these years and the appellant was granted the concession of bail and he has never misused that concession. It is further submitted that the appellant is about 50 years of age and he is the sole bread winner of the family. The appellant has

already undergone 6 months and 11 days of actual custody out of the entire sentence awarded to him. It is also submitted that the appellant is not involved in any other case.

In support of his arguments, learned counsel for the appellant has relied upon judgments of co-ordinate Benches of this Court in *CRA-S-3505-SB-2017* decided on 07.10.2017 titled as “*Rupesh Kumar @ Kala vs. State of Punjab*” reported as *2017(4) RCR (Criminal) 668* and in *Crl. Revision No.1239 of 2011* decided on 12.01.2018 titled as “*Ajay Kumar and another vs. State of Punjab*”, reported as *2018(1) Law Herald 514*.

Learned counsel for the State has stated that the judgment of the Court below has been passed after considering the entire evidence and material on record. The other factual aspects have not been rebutted by the learned counsel for the State. He has also produced on record the custody certificate of the appellant, which is taken on record, as per which, the period of custody as stated by the learned counsel for the appellant, is reiterated.

This Court has heard the learned counsel for the parties and has gone through the paper book.

Insofar as the conviction of the present appellant under Section 18(c) NDPS Act is concerned, this Court is of the view that the Judge, Special Court, had taken into consideration entire evidence and material on record in detail and had rightly come to the conclusion that the appellant is guilty of offence under Section 18(c) NDPS Act and the

judgment passed by the Judge, Special Court, Barnala, is well reasoned. PW-2 HC Bhola Singh and PW-5 ASI Iqbal Singh, Investigating Officer, have proved on record the prosecution story leading to the recovery of opium from the possession of the appellant. PW3 HC Gurmail Singh had given the evidence with respect to taking of the sample parcel and sample of seal to the office of Chemical Examiner and also to the effect that the same was not tampered while in his custody. Similarly, PW1 HC Balwinder Singh has deposed that the case property was with him before being produced before the Magistrate and he also deposed that the same was not tampered with. The said evidence was fully supported by other witnesses and they were cross-examined at length, but nothing had come out in the evidence so as to cause a dent in the case of the prosecution. Thus, the conviction of the appellant under Section 18(c) of the NDPS Act is upheld.

Insofar as the sentence which has been awarded to the appellant is concerned, this Court is of the view that the incident in the present case is of the year 2011 and the appellant has never misused the concession of bail granted to him. The appellant is about 50 years of age and is the sole bread winner of the family. As per the custody certificate, he has already undergone 6 months and 11 days actual custody out of total sentence awarded of 1½ years. A co-ordinate Bench of this Court in **Rupesh Kumar @ Kala's** case (supra) has held as under:-

“Appellant had faced trial in FIR No. 58 dated 1.6.2016 registered at Police Station City Budhlada, District Mansa under Section 22 of the Narcotic Drugs and Psychotropic Substances

Act, 1985 ('the Act' for short). The trial Court vide judgment/order dated 5.9.2017 convicted the appellant for commission of offence punishable under Section 22 of the Act, and sentenced him to undergo two years rigorous imprisonment and to pay a sum of Rs.5000/- as fine and, in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. Hence, the present appeal by the accused-appellant.

As per the prosecution case, appellant was found in conscious possession of 510 tablets of "Almax-05" containing the salt "Alprazolam" (51 strips of tablets of Alprazolam, each of 10 tablets) without any permit or licence.

*During the course of arguments, learned counsel for the appellant has not challenged the conviction of the appellant under Section 22 of the Act as ordered by the Trial Court but has submitted that the sentence qua imprisonment of the appellant be reduced to the period already undergone by him. Learned counsel for the appellant has further submitted that the appellant is a poor man and confined in jail and has no means to pay the fine. Appellant is the only bread earner of the family. In support of his arguments, learned counsel has relied upon the judgment in **Mukesh vs. State of M.P.** 2015(1) RCR(Criminal) 251 where in Hon'ble the Supreme Court has reduced the sentence to already undergone.*

*Learned counsel for the appellant has also placed reliance on the judgment of this Court in **Balvinder Singh vs. State of Haryana** 2012 (2) RCR(Criminal) 458, wherein it was held that the contraband recovered from the accused does not fall within the definition of commercial quantity and the ends of justice would be best met if the substantive sentence of imprisonment be reduced to that already undergone by him.*

A perusal of the custody certificate of the appellant, placed on record reveals that the appellant has undergone about one year three months and seven days of actual sentence and is not involved in any other criminal case. Appellant has been facing criminal proceeding since the year 2016. Moreover, recovery of 510 tablets of "Almax-05" containing the salt "Alprazolam" effected from the possession of the accused falls in the ambit of non-commercial quantity.

Keeping in view the submissions made by learned counsel for the appellant, it would be just and expedient to reduce the sentence qua imprisonment of the appellant to the period already undergone by him.”

Thus, in view of the above said facts and circumstances, as also the judgments relied upon by the learned counsel for the appellant, sentence awarded to the appellant is ordered to be reduced to the period already undergone by him. In addition to the fine of Rs.5,000/- imposed by the learned trial Court, compensation to the tune of Rs.25,000/- is also being imposed. The above said reduction of sentence to the period already undergone will be subject to the the appellant's depositing a fine of Rs.5,000/- with the concerned trial Court within a period of two months from today and the compensation of Rs.25,000/- in the High Court Lawyers and Welfare Fund within a period of two months from today.

It is made clear that in case the above-said amount of Rs.5,000/- and Rs.25,000/- are not deposited by the appellant within a period of two months from today, as directed herein above, the present appeal will be deemed to have been dismissed.

With the above said observations, the present appeal is disposed of.

December 13, 2021
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	Yes