

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

CRA-S-1873-SB-2007(O&M)

Date of decision:-27.7.2022

Satnam Singh and another

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.L.S. Sekhon, Advocate
for the appellants.

Mr.Ashok Kumar Singla, Sr.DAG, Punjab.

H.S. MADAAN, J.

1. Custody certificates in respect of both the appellants filed by the State counsel are taken on record.

2. Referring to the custody certificate of appellant No.2/accused - Jagdev Singh, learned State counsel has pointed out that on completion of sentence in this case, the appellant No.2/accused - Jagdev Singh has been released from custody on 5.8.2008 and fine has also been paid by him.

3. **In being so, the present appeal qua appellant No.2/accused - Jagdev Singh has become infructuous.**

4. Appellants/accused Satnam Singh and Jagdev Singh were

tried by Judge, Special Court, Sangrur in case FIR No.122 dated 22.11.2003 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Sherpur and in terms of judgment dated 14.9.2007, the accused/appellants were convicted in that case for the offence for which they were booked and vide order of even date, they were sentenced to undergo rigorous imprisonment for One year each and to pay a fine of Rs.500/- each and in default thereof to further undergo rigorous imprisonment for a period of one month each.

5. Briefly stated, the facts of the case as per prosecution version are that, on 22.11.2003, a police party headed by ASI Sant Singh was going from village Kumbharwal towards village Ballian via metalled road on private scooters in connection with patrolling and when the police party had reached at the bridge of drain in the area of village Ballian, Pritam Singh, Ex-Sarpanch, resident of Ballian came across the police party and he was also joined therewith; in the meanwhile on the right side of the drain from the western side of the Patti, Satnam Singh and Jagdev Singh, accused were spotted coming carrying a plastic bag each; on seeing the police party, they tried to turn back but they were apprehended by the police party; the Investigating Officer suspected that the accused were carrying some contraband in the plastic bags, therefore, he informed the accused that they had a legal right to get the search conducted in presence of any gazetted officer or a Magistrate, however, the accused reposed faith in the Investigating Officer and their statements in that regard were recorded, which were thumb marked by them and attested by the

witnesses; thereafter the plastic bags carried by the accused were searched, which were found to contain poppy-husk; two samples of 250 gms. each were drawn separately and made into two parcels and the remaining poppy-husk on being weighed came to be 14 kgs. 500 gms. The samples and bulk were converted into sealed parcels and taken into police possession. A ruqa was sent to the police station, on the basis of which formal FIR was recorded. The accused were accordingly arrested in this case. Investigation in the case started. During the investigation, the sample parcels were sent to the office of Chemical Examiner, Punjab and as per report received therefrom, it were found to be that of poppy-husk. On completion of investigation, accused were sent up to face trial.

6. On receipt of case in the Court, observing that prima facie charge for offences under Section 15 of the Act was disclosed against the accused, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

7. During the course of its evidence, the prosecution examined as many as six witnesses detailed as under:

PW1 HC Nirmal Singh and PW2 HC Balbir Singh, who were formal witnesses, tendered in evidence their affidavits Ex.P1 and Ex.P2, respectively.

PW3 ASI Sant Singh, the Investigating Officer of the case deposed regarding the investigation conducted by him.

PW4 HC Tarlochan Singh, a witness of recovery supported the prosecution case.

PW5 ASI Jasmel Singh, who had produced the case property

along with the accused in the Court getting necessary order therefrom deposited in that regard.

PW6 SI Jugraj Singh posted as SHO in Police Station Sherpur deposed regarding production of the accused and the case property before him by ASI Sant Singh, further stating that he had verified the facts and the investigation of the case and affixed his seal on all the parcels.

8. With that the prosecution evidence got concluded.

9. Statements of the accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

10. The accused did not lead evidence in their defence.

11. After hearing arguments, learned trial Court convicted and sentenced accused as mentioned above, which left them aggrieved and they have filed the present appeal, which came up for hearing on 20.9.2007 when it was admitted for regular hearing and on an application under Section 389 Cr.P.C. having been filed by the appellants/accused for suspension of their sentence of imprisonment during the pendency of appeal, the same was allowed.

12. Now the case has come up for regular hearing.

13. I have heard learned counsel for the appellant – accused – convict, learned Sr.DAG, Punjab for the State of Punjab besides going through the record.

14. Regarding appellant No.1/accused – Satnam Singh, learned counsel for the appellants states that he does not challenge the judgment on the point of conviction but wants to make submissions with regard to sentence.

15. Learned counsel appearing for the appellants has contended that the appellant No.1/accused – Satnam Singh is a poor person working as labourer; he is only earning member of his family. He has further contended that the recovery is of the year 2003 and about 19 years have passed therefrom; there is nothing on record to show that the appellant No.1/accused – Satnam Singh has indulged in any criminal activity after his remaining sentence was suspended during the pendency of this appeal and releasing him on bail vide order dated 18.10.2007. He has further contended that as per the custody certificate filed by the State counsel, the appellant No.1/accused – Satnam Singh has already undergone imprisonment of 2 months and 18 days and the recovery involved in this case amounts to non-commercial quantity, which does not attract minimum punishment, as such a lenient view in the matter be taken.

16. Whereas learned State counsel has contended that sentence awarded to the appellants is not on higher side and does not call for any reduction.

17. After hearing the learned counsel for the parties, I find that the prayer made by learned counsel for the appellants deserves to be accepted for various reasons. Firstly, the contraband recovered from the appellants/accused amounts to non-commercial quantity. Secondly, there is nothing on record to show that appellant No.1/accused – Satnam Singh

had indulged in any criminal activity after suspension of his remaining sentence and releasing him on bail during the pendency of the appeal. Furthermore, appellant No.1/accused – Satnam Singh has already undergone about 2 months and 18 days of imprisonment out of the substantive sentence awarded to him.

18. In that way, while upholding the judgment of conviction passed against the accused, the order of sentence qua appellant/accused Satnam Singh is modified and his sentence is reduced to one already undergone by him in this case. Whereas, the fine part is kept as intact. The appellant No.1/accused – Satnam Singh is directed to deposit the amount of fine in the trial Court within one month from today and in case of default of payment of fine, the appellant No.1/accused – Satnam Singh shall be liable to be taken into custody and made to undergo sentence in default of payment of fine by Chief Judicial Magistrate, Sangrur by issuing Non-bailable warrants of arrest against him.

19. As such the appeal qua appellant No.1/accused – Satnam Singh challenging the impugned judgment stands disposed of with above modification in sentence whereas the appeal qua **appellant No.2/accused - Jagdev Singh is disposed of being infructuous.**

20. Intimation be sent to Chief Judicial Magistrate, Sangrur for necessary compliance.

27.7.2022
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes