

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

CRA-S-2447-SB-2007(O&M)

Date of decision:-28.7.2022

Harbhajan Singh

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.Ramandeep Singh, Advocate
for the appellant.

Mr.Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. Appellant/accused Harbhajan Singh was tried by Judge, Special Court, Hoshiarpur in case FIR No.103 dated 6.3.2005 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Sadar, Hoshiarpur, on the allegations that on 6.3.2005 when apprehended by the police party led by ASI Jagdish Chander, in the area of village Pandori Bibi, he was found in possession of 4 kg. 500 gms. of poppy-husk. In terms of judgment dated 7.12.2007, the accused/appellant was convicted for the offence for which he was booked and vide order of even date, he was sentenced to undergo rigorous imprisonment for 1 year and to pay a fine of ₹5,000/- and in default thereof to further undergo rigorous imprisonment for a period of 2 months.

2. Feeling aggrieved by the said judgment of conviction and order of sentence (supra), the accused/appellant Harbhajan Singh had

preferred the present appeal before this Court, which came up for hearing on 11.12.2007 when it was Admitted for regular hearing and on an application under Section 389 Cr.P.C. having been filed by the appellant/accused for suspension of his sentence of imprisonment during the pendency of appeal, the remaining sentence of the appellant was ordered to be suspended during the pendency of appeal.

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

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

5. At the very outset, learned counsel for the appellant states that he does not challenge the judgment on the point of conviction but wants to make submissions with regard to sentence.

6. Learned counsel appearing for the appellant has contended that the appellant/accused was a senior citizen aged more than 60 years at the time of his conviction and now he is aged about 75 years and is in the evening of his life not keeping good health; that more than about 17 years have elapsed from the date of recovery till date; he is not shown to have any past criminal record and there is nothing on record to show that he 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 11.12.2007. He has further contended that as per the custody certificate filed by the State counsel, the appellant/accused has already undergone imprisonment of 1 month and 7 days and the recovery involved in this case amounts to non-commercial quantity, which does not attract minimum sentence, as such a lenient view in the matter be taken.

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

8. After hearing the learned counsel for the parties, I find that the prayer made by learned counsel for the appellant deserves to be accepted.

9. In that way, while upholding the judgment of conviction passed against the appellant/accused, the order of sentence 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/accused 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/accused shall be liable to be taken into custody and made to undergo sentence in default of payment of fine by Chief Judicial Magistrate, Hoshiarpur by issuing Non-bailable warrants of arrest against him.

10. As such the appeal challenging the impugned judgment stands disposed of with above modification in sentence.

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

28.7.2022
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes