

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

CRA-S-126-SB-2006(O&M)

Date of decision:-26.7.2022

Rajinder Singh alias Billu

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.P.S. Brar, Advocate
for the appellant.

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

H.S. MADAAN, J.

1. Appellant/accused Rajinder Singh @ Billu was tried by Judge, Special Court, Bathinda in case FIR No.136 dated 22.12.2002 for an offence under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Sadar, Bathinda and in terms of judgment dated 7.1.2006, the accused/appellant was convicted in that case for the offence for which he was booked and vide order of even date, he was sentenced to undergo rigorous imprisonment for One year and to pay a fine of Rs.2,500/- and in default thereof to further undergo rigorous imprisonment for a period of 2

½ months.

2. Briefly stated, the facts of the case as per prosecution version are that on 22.12.2002, a police party headed by ASI Malkiat Singh while being present in the area of Bander Patti Kot Shamir had received a secret information that accused Rajinder Singh alias Billu was indulging in selling of poppy-husk and if a raid was conducted, he could be caught red handed. The information being reliable, ruqa was sent to Police Station Sadar, Bathinda, on the basis of which formal FIR was registered. The house of the accused was raided. The accused was found to be available at his home. His personal search was conducted as per rules, after summoning DSP(R), Bathinda to the spot, since the accused had desired that search be got conducted in presence of some gazetted officer. The search of accused resulted in recovery of opium wrapped in glazed paper from the right side of pocket of *KURTA*, which the accused was wearing. Two samples of 10 gms. each were drawn and the remaining opium on being weighed came to be 450 gms. The samples and bulk were converted into sealed parcels and taken into police possession. The accused was accordingly arrested in this case. Investigation in the case started. During the investigation, a sample parcel was sent to the office of FSL, Chandigarh and as per report received therefrom, it was found to be that of opium. On completion of investigation, accused was sent up to face trial.

3. On receipt of case in the Court, observing that prima facie charge for offences under Section 18 of the Act was disclosed against the accused, he was charge-sheeted accordingly, to which, he pleaded not

guilty and claimed trial.

4. During the course of its evidence, the prosecution examined as many as four witnesses i.e. PW1 Baljinder Singh, PW2 ASI Malkiat Singh, PW3 SI Gurpreet Singh and PW4 DSP Jagmohan Singh.

5. With that the prosecution evidence got concluded.

6. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case on account of dispute with Bhola Singh, Ex-Sarpanch.

7. In his defence evidence, the accused examined Sukhdev Singh as DW1, Harnek Singh as DW2 and thereafter closed his defence evidence.

8. After hearing arguments, learned trial Court convicted and sentenced accused as mentioned above, which left him aggrieved and he has filed the present appeal, which came up for hearing on 19.1.2006 when it was admitted for regular hearing and on an application having been filed by the appellant/accused for suspension of his sentence of imprisonment during the pendency of appeal, the same was allowed. Now the case has come up for regular hearing.

9. I have heard learned counsel for the appellant – accused - convict, learned Addl. Advocate General for the State of Punjab besides going through the record.

10. 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.

11. Learned counsel appearing for the appellant has contended that the appellant/accused was aged 38 years at the time of recovery and more than about 19 years have elapsed from the date of recovery till date; there is nothing on record to show that the appellant 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 19.1.2006; now the appellant is about 60 years of age; he is a poor person and only earning member in the family. He has further contended that as per the custody certificate filed by the State counsel, the appellant/accused has already undergone imprisonment of 2 months and 28 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.

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

13. After hearing the learned counsel for the parties, I find that the prayer made by learned counsel for the appellant deserves to be accepted for various reasons. Firstly, the contraband recovered from the appellant/accused amounts to non-commercial quantity. Secondly, there is nothing on record to show that he had indulged in any criminal activity after suspension of his remaining sentence and releasing him on bail during the pendency of the appeal. Furthermore, he has already undergone about 2 months and 28 days of imprisonment out of the substantive

sentence awarded to him.

14. 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, Bathinda by issuing Non-bailable warrants of arrest against him.

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

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

26.7.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes