

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

CRA-S-1401-SB-2006(O&M)

Date of decision:-9.5.2022

Subhash Kumar

...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr.G.V.S. Behl, Advocate for
Mr.S.S. Behl, Advocate
for the appellant.

Mr.S.S. Pannu, DAG, Haryana.

H.S. MADAAN, J.

1. Appellant/accused Subhash Kumar was tried by Special Judge, Ambala in case FIR No.27 dated 23.1.2004 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Parao, on the allegations that on 23.1.2004 when apprehended by the police party led by ASI Balwant Singh, in the area of over bridge, G.T. Road, Ambala Cantt., he was found in possession of 15 kgs. of poppy-straw. In terms of judgment dated 14.7.2006, the accused/appellant was convicted in that case for the offence under Section 15 of NDPS Act and vide order dated

17.7.2006, he was sentenced to undergo rigorous imprisonment for 4 years and to pay a fine of ₹4,000/- and in default thereof to further undergo rigorous imprisonment for a period of 6 months.

2. Feeling aggrieved by the said judgment of conviction and order of sentence (supra), the accused/appellant Subhash Kumar had preferred the present appeal before this Court, which was put up on 3.8.2006 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 remaining sentence of the appellant was ordered to be suspended during the pendency of appeal on 9.10.2006. Now the case has come up for regular hearing.

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

4. 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.

5. Learned counsel appearing for the appellant has contended that the appellant/accused was of young age of 32 years at the time of recovery and more than about 18 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 9.10.2006; the appellant is married having big family; he is only earning member of 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 6 months and 2 days and the recovery involved in this case amounts to non-commercial quantity, as such a lenient view in the matter be taken.

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

7. 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 actual sentence of 6 months and 2 days out of the substantive sentence awarded to him.

8. 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 may 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.

9. As such the appeal challenging the impugned judgment

stands disposed of with above modification in sentence.

Necessary intimation be sent to Chief Judicial Magistrate,
Ambala for necessary compliance.

9.5.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes