

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-1513-SB-2006 (O&M)

Date of decision : 17.8.2022

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Balwinder Singh and another

.....Appellants

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mrs. K.K. Kahlon, Advocate
for the appellants.

Mr.Anmol Singh Sandhu, Assistant Advocate General,
Punjab.

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H. S. Madaan, J. (Oral)

1. Appellant/accused Balwinder Singh (since dead – appeal qua him already abated) and Bhinder Singh, son of Rajbir Singh, resident of Village Kotla Nihang, P.S. Sadar Ropar, both of them being accused in FIR No. 107 dated 13.5.2005, for offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the Act'), registered at Police Station Sadar, Ropar, were tried by Judge, Special Court, Rupnagar on the allegations that on 13.5.2005, at about 7.05 P.M., when apprehended by the Police Party in the area of village Gandho Kalan,

while coming on a motorcycle, being driven by Balwinder Singh on which Bhinder Singh was pillion riding, they were found to be in possession of 9 kgs of poppy husk in a bag, which they were carrying on the motorcycle. The trial ended in conviction of both the accused for an offence under Section 15 of the Act vide judgment dated 3.8.2006 and in terms of the order passed on that date, they were sentenced to undergo rigorous imprisonment for a period of 1- ½ years each and to pay a fine of Rs.1000/- each, in default of payment of fine to undergo further rigorous imprisonment for three months each.

2. Feeling aggrieved by the said judgment of conviction and order of sentence, the accused-convict had approached this Court by way of filing the present appeal, which was taken up on 18.8.2006 and was admitted for regular hearing. On an application under Section 389 Cr.P.C. having been filed by the appellants/accused, the remaining sentence of imprisonment of the appellants was suspended during the pendency of appeal vide order dated 31.8.2006. Now the appeal has come up for final hearing.

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

4. At the very outset, learned counsel for the appellant-accused Bhinder Singh, has stated that she does not challenge the judgment passed by Judge, Special Court, Rupnagar, on the point of conviction, however she has got submissions to make as regards the sentence part.

5. According to the learned counsel for the appellant, the surviving appellant Bhinder Singh is not involved in any other criminal case; the contraband recovered in this case amounts to non-commercial quantity. She has further contended that the appellant-Bhinder Singh is a poor person and the only earning member of the family and he has not indulged in any criminal act after suspension of sentence and grant of bail by this Court to him, till date. According to her, he has already undergone total sentence of 1 month and 22 days, in terms of the custody certificate placed on record by the State counsel. She prays that a lenient view be taken, as far as the sentence part is concerned.

6. Learned State counsel has stated that the Court may pass any order considering the facts and circumstances of the case.

7. Thus keeping in view the submissions made by counsel for the appellant and the fact that the contraband involved in this case amounts to non-commercial quantity, which does not attract any minimum punishment; the fine imposed is said to have been deposited as mentioned in order dated 31.8.2006 passed in this case; the recovery involved was from two persons, one of them has died; the accused has undergone almost two months of imprisonment, I find that the ends of justice would be adequately met, if the sentence of imprisonment awarded to him is reduced to the one already undergone by him in this case, while keeping the fine part as intact. It is ordered accordingly.

8. Accordingly, the appeal challenging the impugned

judgment, is allowed partly, in as much as, upholding the conviction of the appellant-accused – Bhinder Singh, whereas the sentence part is modified as detailed above. Necessary intimation be sent to Chief Judicial Magistrate, Rupnagar, for compliance.

17.8.2022
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No