

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-208-SB-2006 (O&M)

Date of decision : 26.8.2022

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Bhura Singh

.....Appellant

vs.

State of Punjab

.....Respondent

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

Present: Mr. Jashandeep Singh Sandhu, Advocate for the appellant.

Mr. G.S. Dhillon, Assistant Advocate General,
Punjab.

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H. S. Madaan, J. (Oral)

1. Appellant/accused Bhura Singh s/o Malkiat Singh, then aged about 23 years, resident of Village Behman Diwan, Tehsil and District Bathinda, alongwith his co-accused Kaka Singh , being accused in FIR No. 26 dated 20.3.2003, for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the Act'), registered at Police Station Nahianwla, were tried by Judge, Special Court, Bathinda, on the allegations that on 20.3.2003, when appellant-accused Bhura Singh alongwith his co-accused Kaka Singh, were coming on a bicycle, they were apprehended by the Police Party headed by ASI Paramjit Singh,

of Police Station Nahianwala, in the area in between village Deon and village Behman Diwana, they were found to be in conscious possession of 15 kgs of poppy husk in a plastic bag, without any license or permit. The trial ended in conviction of both the accused for the offence for which they had been booked vide judgment dated 7.11.2005 and in terms of order passed on that very day, they were sentenced to undergo rigorous imprisonment for a period of one year each and to pay a fine of Rs.2,000/- each, in default of payment of fine to further undergo rigorous imprisonment for a period of three months each.

2. Feeling aggrieved by the said judgment of his conviction and order of sentence, the accused-convict Bhura Singh, had approached this Court by way of filing the present appeal, which was taken up on 27.2.2006 and was admitted for regular hearing and the remaining sentence of imprisonment of the appellant was suspended during the pendency of appeal, subject to furnishing of bail bonds to the satisfaction of CJM, Bathinda and on his depositing fine at the time of furnishing bail bonds.

3. Subsequently, on finding that the appellant-convict was trying to prolong the proceedings by mis-using the concession of suspension of sentence and grant of bail to him that benefit given to him vide order dated 27.2.2006, was withdrawn and a direction was issued to Chief Judicial Magistrate, Bathinda, for issuance of non-bailable warrants of arrest and send him to jail. In terms of intimation received from Chief Judicial Magistrate, Bathinda, the accused has

since been arrested in this case and sent to Central Jail Bathinda, where he is at present. Now the appeal has come up for final 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 has stated that he does not challenge the judgment of conviction passed against the appellant -accused and his only submission is with regard to the quantum of sentence. He has contended that the appellant-accused has already undergone 7 months and 19 days of imprisonment in terms of the custody certificate placed on record by the State counsel. He is not involved in any other case under the NDPS Act. As regards his involvement in a case under Section 379 IPC etc. he is on bail. He has further contended that the appellant Bhura Singh was aged about 23 years at the time of recovery and further the recovery involved is not on very high side. The appellant-accused is a poor person. He is married, having a son and he is the only earning member in the family. Therefore, prayer has been made that the sentence of imprisonment awarded to him may be reduced.

6. Learned State counsel states that the Court may pass any order in accordance with law.

7. After considering the rival contentions, I find that the recovery effected in this case amounts to non-commercial quantity, for which no minimum punishment is prescribed and out of substantive imprisonment of one year awarded to the appellant, he has already undergone imprisonment of 7 months and 19 days.

8. Considering the circumstances explained by learned counsel for the appellant, I find that it shall be proper and appropriate, if the sentence of the appellant – accused is reduced to the one already undergone by him in this case, while keeping the fine part as intact. It is ordered accordingly.

9. Accordingly, the appeal challenging the impugned judgment, is allowed partly, in as much as, upholding the conviction of the appellant-accused – Bhura Singh, whereas the sentence part is modified as detailed above.

10. The appellant who is stated to be lodged in Central Jail, Bathinda, be released from there, on depositing the amount of fine of Rs.2,000/-. However, if he does not pay the amount of fine, then he is required to undergo imprisonment in default of payment of fine, as directed by the trial Court in the impugned judgment. Necessary intimation be sent to Chief Judicial Magistrate, Bathinda, in that regard.

22.8.2022
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No