

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

CRA-S-1942-SB-2005

Date of decision:-11.5.2022

Kala @ Raj

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.L.S. Sekhon, Advocate
for the appellant.

Mr.Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. Appellant/accused Kala @ Raj was tried by Judge, Special Court, Sangrur in case FIR No.23 dated 21.1.2000 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Sangrur, on the allegations that on 21.1.2000 when apprehended by the police party led by ASI Chamkaur Singh, in the area within the jurisdiction of Police Station Sangrur, he was found in possession of 30 kgs. of poppy-husk. In terms of judgment dated 26.10.2005, the accused/appellant was convicted in that case for the offence under Section 15 of NDPS Act and vide order of even date, he was sentenced to undergo rigorous imprisonment for 1 ½ years and to pay a fine of ₹1,000/- and in default thereof to further undergo rigorous imprisonment for a period of 3 months.

2. Feeling aggrieved by the said judgment of conviction and order of sentence (supra), the accused/appellant Kala @ Raj had preferred

the present appeal before this Court, which was Admitted for regular hearing on 19.1.2006 and on an application under Section 389 Cr.P.C. having been filed by the appellant/accused for suspension of his remaining sentence of imprisonment during the pendency of appeal, the remaining sentence of the appellant was ordered to be suspended during the pendency of appeal. 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 28 years at the time of recovery and more than about 22 years have elapsed from the date of recovery till date; the appellant is a poor person; 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 27 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.

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. The contraband recovered from the appellant/accused amounts to non-commercial quantity. Furthermore, he has already undergone actual sentence of 6 months and 27 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 shall 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. The Chief Judicial Magistrate, Sangrur shall do the needful by issuing non-bailable warrants of arrest against the appellant and get him arrested for that purpose.

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

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

11.5.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes