

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

CRA-S-1815-SB-2012 (O&M)

Date of decision: 14.11.2022

Amrik Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Ms. Puneeta Sethi, Advocate
for the appellant.

Mr. Shubham Kaushik, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Challenge laid in this appeal is to the judgment of conviction dated 06.02.2012 and order of sentence of the even date, passed by the trial Court, vide which the appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) and was sentenced to undergo rigorous imprisonment for a period of 03 years and to pay a fine of Rs. 25,000/- with default clause.

Brief facts of the case are that on 08.09.2006, the police party headed by ASI Baldev Singh was on a patrol duty and they saw a person sitting underneath trees and a plastic bag was lying by his side. On seeing the police party, he became perplexed and tried to run away into the fields, however, he was apprehended. On inquiry, he disclosed his name as 'Amrik Singh' i.e. the appellant herein. On checking the said bag, it was found to be containing poppy husk, from which two samples of 250 grams each were

taken and the remaining poppy husk was weighed, which came to 29 kgs. 500 grams. Thereafter, the investigation was completed and after receiving the report of the Chemical Examiner, *Challan* against the appellant/accused was presented before the Court.

On presentation of *Challan*, the trial Court framed the charge under Section 15 of the NDPS Act against the accused, to which he pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined PW-1 ASI Baldev Singh, PW-2 HC Avtar Singh, PW-3 HC Harwinder Singh, PW-4 HC Sukhwinder Singh, PW-5 Suresh Kumar and PW-6 Inspector Hardeep Singh and thereafter, the prosecution evidence was closed.

Thereafter, the statement of the appellant/accused under Section 313 Cr.P.C. was recorded and all the incriminating evidence was put to him, however, he denied the same and took the plea of false implication. The appellant/accused did not examine any witness in his defence.

The trial Court, after hearing both the parties and appreciating the evidence and material brought on record, convicted and sentenced the appellant/accused as noticed above. Hence, the present appeal.

It is worth noticing that during the pendency of the present appeal, the sentence of the appellant was suspended by this Court on 06.08.2012 considering the fact that he has undergone substantive portion of his sentence.

Learned counsel for the appellant has argued that the appellant was not produced before the Gazetted Officer or the Magistrate in terms of

Section 50 of the NDPS Act and at no point of time, the second Investigating Officer was called at the spot and the entire investigation including the recovery was conducted by the same Investigating Officer, therefore, the investigation carried out by ASI Baldev Singh is not as per the mandatory provisions of Section 50 of the NDPS Act.

Learned counsel for the appellant has further submitted that since out of the total sentence of 03 years, awarded by the trial Court, the appellant has already undergone a period of 02 years, 10 months and 19 days, he does not want to address arguments on merits. It is further submitted that the appellant is a poor person and has his own family to support and he has faced the agony of protracted trial for a period of about 16 years, therefore, by taking a lenient view, the sentence awarded to the appellant be reduced to the period already undergone by him. It is further submitted that the FIR pertains to the year 2006 and the sentence of the appellant was suspended by this Court during the pendency of the present appeal and he has never misused the concession of suspension of sentence.

Learned State counsel, on the basis of the custody certificate filed today in Court, has not disputed the factual position and he has no serious objection to the prayer made by learned counsel for the appellant.

After hearing learned counsel for the parties, I uphold the impugned judgment of conviction passed by the trial Court as the same is based on appreciation of prosecution evidence, proving guilt of the appellant, however, considering the fact that the appellant has faced the agony of protracted trial; the appellant has already undergone about 02 years, 10 months and 19 days of total sentence and also in view of the fact

that he is a poor person and has his own family to support, the present appeal is *partly allowed* and the sentence awarded to the appellant is reduced to the period already undergone by him. However, the imposition of fine of Rs.25,000/- is waived off considering the fact that the appellant is just short of 01 month and 11 days of completing his sentence.

Bail/surety bonds of the appellant be discharged, accordingly.

14.11.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No