

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

CRA-S-235-SB-2006(O&M)

Date of decision:-10.8.2022

Vijay Mohammad and another

...Appellants

Versus

State of Punjab

...Respondent

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

Present: Mr.L.S. Sidhu, Advocate
for the appellants.

Mr.Sandeep Vermani, Addl.A.G., Punjab.

H.S. MADAAN, J.

1. Appellants/accused Vijay Mohammad and Jagsir Singh @ Seera were tried by Judge, Special Court, Bathinda in case FIR No.58 dated 10.11.2003 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Cantt., Bathinda, on the allegations that on 10.11.003 in the area of Bhucho Khurd near Gurudwara Laberi Sar Sahib at about 8:15 a.m., they were found in conscious possession of 14 kgs.100 gms. of poppy husk. They were arrested in this case. After drawing sample, sealed parcels of sample and bulk were prepared, which were taken into police

possession. Accused were arrested in this case. Ruqa was sent to the police station, on the basis of which formal FIR was registered. The site plan of the place of recovery was prepared. As per the report received from Chemical Examiner, Punjab, the sample was found to be that of poppy husk. On completion of investigation and other formalities, challan against the accused was prepared and filed in the Court.

2. On presentation of the challan in the Court, copies of challan and other documents relied upon in the challan were supplied to the accused free of costs, as envisaged under Section 207 Cr.P.C. Finding a prima facie case against the accused for an offence punishable under Section 15 of the Act, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial.

3. During the course of prosecution evidence, it examined PW1 HC Sukhraj, who had taken the sample parcel to the office of Chemical Examiner, PW2 ASI Harcharan Singh, the Investigating officer of the case, PW3 HC Sukhdev Singh, a witness of recovery and PW4 SI Jaswinder Pal, SHO of the police station.

With that the prosecution evidence got concluded.

4. Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

5. In defence evidence, the accused had examined Mohinder Singh as DW1 and Ms.Surjit Kaur as DW2.

6. After hearing arguments, in terms of judgment dated

25.1.2006, the accused/appellants were convicted in that case for the offence under Section 15(b) of NDPS Act and vide order of even date, they were sentenced to undergo rigorous imprisonment for One year each and to pay a fine of Rs.2,000/- each and in default thereof to further undergo rigorous imprisonment for a period of two months each.

7. Feeling aggrieved by the said judgment of conviction and order of sentence (supra), the accused/appellants had preferred the present appeal before this Court, which was put up on 3.2.2006 when it was Admitted for regular hearing and on an application under Section 389 Cr.P.C. having been filed by the appellants/accused for suspension of their sentence of imprisonment during the pendency of appeal, the remaining sentence of the appellants was ordered to be suspended during the pendency of appeal on that very date.

8. Now the case has come up for regular hearing.

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

10. At the very outset, learned counsel for the appellants states that he does not challenge the judgment on the point of conviction but wants to make submissions with regard to sentence.

11. Learned counsel appearing for the appellants has contended that the appellant/accused Vijay Mohammad was of young age of 24 years and appellant/accused Jagsir Singh @ Seera was of 38 years age at the time of framing of charge against them; they are poor persons and first offenders; there is nothing on record to show that the appellants have indulged in any criminal activity after their remaining sentence was

suspended during the pendency of this appeal and releasing them on bail vide order dated 3.2.2006. He has further contended that as per the custody certificates filed by the State counsel, the appellants/accused have already undergone imprisonment of about 2 months to be precise 1 month and 29 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.

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

13. After hearing the learned counsel for the parties, I find that the prayer made by learned counsel for the appellants deserves to be accepted for various reasons. Firstly, the contraband recovered from the appellants/accused amounts to non-commercial quantity. Secondly, there is nothing on record to show that they had indulged in any criminal activity after suspension of their remaining sentence and releasing them on bail during the pendency of the appeal. Furthermore, they have already undergone actual sentence of about 2 months out of the substantive sentence awarded to them.

14. In that way, while upholding the judgment of conviction passed against the appellants/accused, the order of sentence is modified and their sentence is reduced to one already undergone by them in this case. Whereas, the fine part is kept as intact. The appellants/accused are directed to deposit the amount of fine in the trial Court within one month from today and in case of default of payment of fine, the

appellants/accused shall be liable to be taken into custody and made to undergo sentence in default of payment of fine by Chief Judicial Magistrate, Bathinda by issuing Non-bailable warrants of arrest against them.

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

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

10.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes