

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

CRA-S-2173-SB-2013(O&M)

Date of decision:-6.5.2022

Ashok Kumar

...Appellant

Versus

State of Punjab

...Respondent

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

Present: Mr.S.S. Gill, Advocate
for the appellant.

Mr.Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

1. Appellant/accused Ashok Kumar, resident of village Brahman Majra, P.S. Ghagga, District Patiala along with his co-accused Balwinder Singh was tried by Judge, Special Court, Patiala in case FIR No.432 dated 21.9.2009 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Kotwali.

2. As per the prosecution story, on 21.9.2009, a police party headed by ASI Harpreet Singh while being present at T-point Banna Naddi near Shish Mehal Colony, Patiala was checking vehicles and during that intercepted one Uno car bearing registration No.DL-9CA-7421 coming from Sanauri bus stand side. The car was being driven by appellant/accused Ashok Kumar with co-accused Balwinder Singh also sitting therein. The search of car was conducted as per rules and from the dicky of the car a bag containing poppy husk was found. After drawing

two samples of 100 gms. each therefrom, the remaining poppy husk on being weighed came out to be 44 kgs. 800 gms. The sample and remainder were converted into sealed parcels and were taken into police possession. The ruqa was sent to the police station, on the basis of which formal FIR was registered. Accused were arrested in this case. During the investigation, the sample parcel was sent to the office of Chemical Examiner, Punjab and as per report received therefrom, it was found to be that of poppy husk. On completion of investigation, accused were sent up to face trial.

3. On conclusion of trial vide judgment dated 7.5.2013, the accused/appellant along with his co-accused were convicted in that case for an offence under Section 15 of NDPS Act and vide order of even date, they were sentenced to undergo rigorous imprisonment for 4 years and to pay a fine of ₹5,000/- each and in default thereof to further undergo rigorous imprisonment for a period of six months each.

4. Feeling aggrieved by the said judgment of conviction and order of sentence (supra), the accused/appellant Ashok Kumar had preferred the present appeal before this Court, which was put up on 2.7.2013 when it was Admitted for regular hearing and recovery of fine was ordered to be remain stayed during the pendency of the appeal. On an application having been filed by the appellant/accused for suspension of his sentence of imprisonment during the pendency of appeal, the remaining sentence of the appellant was ordered to be suspended during the pendency of appeal on 15.12.2015. Now the case has come up for regular hearing.

5. I have heard learned counsel for the appellant and learned State counsel besides going through the record.

6. 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.

7. Learned counsel appearing for the appellant has contended that the appellant/accused was of young age of 32-33 years at the time of recovery and more than 11 years have elapsed therefrom; he is married having two children; he is only earning member of the family and he is a first offender. He further contended that the appellant/accused has already undergone imprisonment of 2 years, 4 months and 13 days, which includes custody as under trial of 2 months and 3 days and post conviction period of 2 years, 2 months and 10 days as per the custody certificate filed by the State counsel and the recovery involved in this case amounts to non-commercial quantity, as such a lenient view in the matter be taken.

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

9. 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. Firstly, the contraband recovered from the appellant/accused amounts to non-commercial quantity. Secondly, the appellant is not shown to have any past criminal record. Similarly, there is nothing on record to show that he had indulged in any criminal activity after suspension of his remaining sentence and releasing him on bail

during the pendency of the appeal. Furthermore, he has already undergone actual sentence of 2 years, 4 months and 13 days out of the substantive sentence awarded to him.

10. 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 may 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.

11. As such the appeal challenging the impugned judgment stand disposed of with above modification in sentence.

Since the main appeal stands disposed of with modification in sentence, the miscellaneous applications, if any stand disposed of accordingly.

Necessary intimation be sent to Chief Judicial Magistrate, Patiala for necessary compliance.

6.5.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes