

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-3226-SB of 2012 (O&M)

Date of decision : December 21, 2022

Gopi Ram

....Appellant

versus

State of Punjab

....Respondent

Coram: Hon'ble Mr. Justice Kuldeep Tiwari

Present : Mr. Ravi Kamal Gupta, Advocate for the appellant
Mr. Maninder Singh, DAG, Punjab

Kuldeep Tiwari, J.

The instant appeal has been directed against the judgment of conviction and order of sentence dated 4.7.2012 passed by the learned Special Court, Sri Muktsar Sahib, in case FIR No. 405 dated 6.11.2005, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), registered at Police Station City Lambi, District Sri Muktsar Sahib, whereby, the appellant was held guilty for the commission of offence punishable under Section 18 of the Act and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs 1 lakh and in case of default of payment of fine, the appellant was further ordered to undergo RI for

two years.

FACTUAL MATRIX

The prosecution case unfolds on the statement of one SI Shinderpal Singh, Investigating Officer (PW5) wherein, it has been stated that he was posted at Police Station, City Malout as Investigating Officer and on that day, he along with other police officials, on a private jeep, in connection with patrol duty and checking of suspected persons, were present at bus stand of Lambi, where Paramjit Singh son of Balbir Singh resident of Kandukhera met and he was joined in the police party. When they reached near the bridge of twin canals in the area of village Panjawa, one person was found standing near the hand pump and he was eating some black substance from a glazed paper held by him in his hand. On noticing the police, the said person threw the polythene Bag on the ground. On suspicion, Investigating Officer (PW5) stopped the jeep and apprehended the accused. The mouth of the polythene Bag was already open and opium was clearly visible in it. He inquired the whereabouts of the accused who was identified by the witness. Out of the recovered opium, 10 grams was separated as sample and converted into a parcel. On weighment, the remaining opium came to be of 2 kilograms 490 grams and it was converted into another parcel. Both the parcels were sealed by him with his

seal bearing impression 'SS'. Specimen seal chit Ex. P1 was prepared and the seal after use was handed over to HC Gurdeep Singh and then he took the case property into possession vide separate recovery memo Ex. P8, attested by HC Gurdeep Singh, HC Balraj Singh and independent witness Paramjit Singh. On personal search, a sum of Rs 80/- were recovered from the accused and the same were taken into possession vide recovery memo Ex. P10. Ruqa Ex. P11 was sent to the Police Station through PHG Kulwinder Singh and on the basis of which formal FIR Ex. P12 was registered by ASI Vinod Kumar and the witness identified his signatures on endorsement Ex. P12/1 over it. The accused was arrested after disclosing grounds of arrest vide memo Ex. P9. Rough site plan Ex. P13 was prepared by the Investigating Officer at the spot. All the memos were attested by the same set of witnesses. Statements of the witnesses were recorded. On returning to the Police Station, the Investigating Officer produced the accused and the case property before SHO Atma Singh, PW1, along with money recovered from personal search. PW1 checked the case property and verified the investigation and then he sealed it with his seal 'AS' and took the same into his possession vide separate memo Ex. P2.

After completion of investigation, the Station House Officer filed final report under Section 173 Cr.P.C. against the

present appellant. After complying the requirements of Section 207 Cr.P.C., the learned trial court framed charge under Section 18 of the Act against the appellant-accused. The appellant did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined as many as five witnesses. The statement of appellant-accused was recorded under Section 313 Cr.P.C. He denied all the incriminating evidence put to him and further claimed that he has been falsely implicated. Nothing was recovered from him. In fact he was on a Bus going from Mandi Dabwali to Malout to meet his friend Amarjit Singh son of Baljit Singh resident of Village Adhnia. The moment he deboarded the bus, the police picked him up and planted the present contraband upon him. He also examined three witnesses in defence. The learned trial court, after considering the oral as well as documentary evidence adduced by the prosecution and defence, held the appellant guilty for the commission of offence punishable under Section 18 of the Act. The trial court considering the recovered contraband, that is 2.5 kgs of opium, as commercial quantity, sentenced the appellant to undergo RI for ten years.

Submissions by learned counsel for the parties

At the very outset, learned counsel for the appellant has submitted that the trial court has recorded a wrong finding to the

extent that the recovered quantity falls within the ambit of commercial quantity. He has stated that the alleged recovery is only 2.5 kgs which is less than commercial quantity. He relied upon Section 2(viia) of the Act which defines “commercial quantity”. He further relied upon entry No. 92 of the Gazette Notification specifying small quantity and commercial quantity with regard to opium.

Section 2 (viia) of the Act read as under:-

“2(viia) "commercial quantity", in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette.”

In the official Gazette notification, the quantity specified for 'small quantity', in case of opium, is 25 grams and for 'commercial quantity' is 2.5 kgs. On joint reading of Section 2(viia) of the Act with Entry No. 92 of the Gazette notification, to bring a case within the ambit of commercial quantity, the recovered contraband shall be more than 2.5 kgs. Undisputedly, in the present case, the recovered quantity is 2.5 kgs and therefore, it does not fall under the category of 'commercial quantity'.

The learned State counsel did not dispute the factual submission made by counsel for the appellant with regard to the

recovered contraband. Therefore, in view of the above, the finding of learned trial court to the extent that the recovered opium falls within the ambit of 'commercial quantity' is erroneous and therefore, the same is not sustainable. Therefore, the recovered contraband falls in between small quantity and commercial quantity, known as 'non commercial quantity'. Section 18 (c) of the Act prescribes the punishment for 'non commercial' quantity and provides that any person who in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lac rupees.

Section 18 of the Act reads as under:-

“18. Punishment for contravention in relation to opium poppy and opium.-- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,--
(a) where the contravention involves small quantity,

with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.”

The learned counsel for the appellant restricted his arguments to the extent of sentence awarded by the learned trial court i.e. rigorous imprisonment of ten years and fine of Rs one lakh. He submitted that since the recovered contraband does not fall within the ambit of commercial quantity, therefore, the sentence is on very higher side. Therefore, he prayed for reduction of sentence to the period already undergone by the appellant. To buttress his arguments, he relied upon judgment passed by the Coordinate Bench of this Court in **Lakha Singh vs State of Haryana, Criminal Appeal No. 137-SB of 2003, decided on 24.1.2013** wherein this

Court reduced the sentence from 10 years to 4 years 5 days i.e. the period already undergone and also reduced the fine to Rs 20,000/- from Rs One lac awarded by the learned trial court.

I have considered the submissions made by the learned counsel for the appellant. So far as the observation of the trial court is concerned, declaring that the recovered contraband from the appellant is of 'commercial quantity', the same is erroneous and accordingly set aside in light of the observation made above. With regard to the submission on quantum of sentence, this Court considered all the aggravated and mitigating circumstances. The present case was registered in the year 2005. The appellant-accused faced agony of trial for almost about 17 years and at the time of arrest he was 55 years of age. Now he is more than 72 years of age. The custody certificate produced on record by the learned State counsel reveals that he has undergone actual sentence of 3 years, 7 months and 13 days and the custody certificate further shows that he is not involved in any other case. This Court examined the entire record and also the custody certificate. The sentence of the appellant was suspended by this Court way back on 28.4.2016. Thereafter, the appellant has not misused the concession of bail granted by this Court. It seems that the appellant has joined the mainstream of the society. No useful purpose will be

served either for the society or the appellant by sending him to prison again. Therefore, the sentence of the appellant can be reduced to the period already undergone. For this, this Court placed reliance on judgment of the Hon'ble Supreme Court in **Sk. Sakkar @ Mannan vs State of West Bengal, 2021(4) SCC 483** wherein the Supreme Court, after considering the mitigating circumstances, reduced the sentence to the period already undergone. The relevant observations reads as under:

“11. It is manifest from Section 20(i) of NDPS Act (as it stood in 1997), that even though a maximum sentence of five years RI and a fine of upto Rs.50,000/- was prescribed but there was no minimum mandatory sentence. The Legislature had in its wisdom left it to the judicious discretion of a court to award the minimum sentence albeit guided by the well known principles on the proportionality of sentence. Taking into consideration the peculiar facts and circumstances of this case, it appears to us that the ends of justice would be adequately met if the appellant's sentence is reduced to the extent of the period he has already undergone. We order accordingly.”

In the same way, the Hon'ble Supreme Court in case **Issak Nabab Shah vs The State of Maharashtra, Criminal Appeal No. 828 of 2020 decided on 3.12.2020**, reduced the sentence from

10 years to 6 years in case of non-commercial quantity, (quantity between small and commercial quantity) and observed as under:-

“5. Having heard the learned Advocates appearing for the respective parties and in the facts and circumstances of the case, more particularly when the quantity/Ganja recovered from the appellant was 6.300 kilogram, which is between small quantity and commercial quantity and considering the fact that the maximum punishment for such offence is 10 years rigorous imprisonment, out of which the appellant has already undergone six years rigorous imprisonment, we allow the present appeal in part and modify the impugned judgment and order passed by the learned trial Court, confirmed by the High Court, to the extent of imposing the sentence of six years rigorous imprisonment in place of ten years rigorous imprisonment as imposed by the learned trial Court and confirmed by the High Court. Rest of the judgment and order passed by the learned trial Court, confirmed by the High Court, is hereby confirmed.”

In view of the legal proposition settled by the Hon'ble Supreme Court, considering the age of the accused, aggravating and mitigating circumstances, while maintaining balance between deterrence against crime vis-a-vis reformatory approach of punishment, this Court deem it appropriate to reduce the period of

sentence of the appellant to the period already undergone i.e. 3 years, 7 months and 13 days

Conclusion

In view of the above, the present appeal is partly allowed. The impugned judgment of conviction dated 4.7.2012 is modified to the extent that the recovered contraband falls within the ambit of 'non commercial' quantity. However, conviction of the appellant under Section 18 of the Act is maintained. Accordingly, the sentence imposed upon the appellant is reduced to the period already undergone. The sentence of fine is also reduced to Rs 10,000/- from Rs one lakh, as imposed by the learned trial court. In default of payment of fine, the appellant accused shall undergo RI for a period of six months.

December 21, 2022

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**(Kuldeep Tiwari)
Judge**

Whether speaking/reasoned ? *Yes/No*

Whether Reportable ? *Yes/No*