

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

CRA-S-3489-SB-2012

Date of Decision : **November 29, 2022**

AJAY KUMAR

.....Appellant

VERSUS

STATE OF HARYANA

.....Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Amaninder Preet, Advocate
Legal Aid Counsel for the appellant.

Mr. Anmol Malik, DAG, Haryana.

KULDEEP TIWARI. J.

The instant appeal has been directed against the judgment of conviction dated 27.7.2012 and the order of sentence dated 31.7.2012, in case FIR No. 45 dated 17.7.2011, under Sections 328 and 379 IPC, Police Station GRP, Chandigarh, whereby, the appellant was convicted for an offence punishable under Section 328 IPC and sentenced to undergo rigorous imprisonment for a period of 7 years and to pay fine of Rs.2,500/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of 6 months and was also convicted for an offence punishable under Section 379 IPC and sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.2,500/- and in default of payment of fine, to undergo rigorous imprisonment for a period of 6 months. Both the sentences were ordered

to run concurrently.

Brief facts of the prosecution case as emerged from the FIR are that on 17.7.2011, one Mohinder Pal SI/SHO, Government Railway Police Station, Chandigarh was present alongwith EASI Balbir Singh, EASI Brij Lal and Duty EASI Hukam Singh at northern corner of platform No.1, Railway Station, Chandigarh in connection with checking of trains and detection of criminals/smugglers when he had received an information through telephone from EASI Karambir Singh that one black complexioned boy was searching the pocket of a sleeping person on the platform and he was keeping watch on him and asked them to reach there. Upon which Mohinder Pal SI/SHO alongwith accompanying police officials reached at the spot and found the accused-appellant having something in his right wrist and started to run away after seeing the police party. Mohinder Pal SI/SHO with the help of other police officials overpowered him, on being interrogated, disclosed his name as Ajay Kumar. Then he was taken near to the person sleeping on the platform, who was found unconscious. Then the appellant was searched thoroughly upon which four currency notes of the denomination of Rs.100/- each and three currency notes of the denomination of Rs.500/- were recovered from the right fist of the accused. The person, who was sleeping there, was made to wake up and he, being perplexed under intoxicating influence, disclosed his name as Munna Sahai. The victim was sent for medical treatment to Government Hospital, Sector-6, Panchkula. On further interrogation of the accused, he disclosed that he had administered

intoxicating tablets to Munna Sahai in tea due to which he became unconscious. Thereafter, on suspicion, accused-Ajay Kumar was searched and 30 tablets of yellow colour wrapped in white coloured polythene were recovered from the back pocket of the pant of the accused. Five tablets were separated as sample for chemical examination and remaining twenty five tablets were put in plastic containers and were sealed with seal 'MP' and the currency notes and the plastic containers containing sample tablets and the remaining tablets recovered from the possession of the accused were taken into possession. Thereafter, the aforesaid FIR was registered. During investigation, Munna Sahai identified the accused-Ajay Kumar. Thereafter, the appellant-accused suffered a disclosure statement on 18.7.2011 implicating one Rajan. The appellant-accused again suffered a disclosure statement on 19.7.2011 implicating one Tharki Baba for supply of tablets. However, the investigating agency could not ascertain the whereabouts of Rajan and Tharki Baba. The sample tablets alongwith urine sample of Munna Sahai (taken during his medical-legal examination) were sent to FSL, Madhuban for Chemical Examination. The CCTV camera footage and the photographs were obtained from the RPF Post, Railway Station, Chandigarh. The CCTV footage showed that Munna Sahai and the accused sitting, taking tea and lying together. Dr. Purnima Singh after examining the report of FSL opined that the blood and the urine sample of Munna Sahai were positive for diazepam. After completion of investigation, final report under Section 173 Cr.P.C. was filed before the

learned Ilaka Magistrate, who upon subsequently finding the case to be exclusively triable by the Court of Sessions, committed the case to the Court of Sessions.

The appellant was charged under Sections 328 and 379 IPC, to which he pleaded not guilty and claimed trial.

The prosecution examined twelve witnesses in order to prove its case.

The accused did not produce any evidence in defence.

The learned trial Court, after examining the entire record, recorded the verdict of conviction against the appellant and sentenced him, as mentioned above.

I have heard the learned counsel for the appellant, who submitted that he does not wish to challenge the conviction of the appellant but he prays that the sentence awarded to the present appellant be reduced to the period already undergone. For this, he submitted that the present FIR was registered way back on 17.7.2011. The appellant has faced the agony of protracted trial for about 11 years. The age of the appellant was 21 years when he was arrested. He further stated that the appellant is not involved in any other criminal case. His mother has already expired and father is blind and dependent upon him. He stated that out of 7 years of rigorous imprisonment, he has already undergone 5 years, 9 months and 5 days as on 20.11.2022.

On the other hand, the learned State counsel opposes the submissions made by the learned counsel for the appellant and submitted

that the learned trial Court has adequately sentenced the appellant. However, he is unable to dispute the factual submissions made by the learned counsel for the appellant.

This Court has examined the entire record with the able assistance of both the counsels for the parties.

Considering the aspect that the appellant has already undergone the substantial sentence awarded to him and he is neither involved in any other case nor he misused the concession of bail granted by this Court. He was released on bail way back in the year 2015. It seems that the appellant has mended his ways and is now settled in the mainstream of the society. Therefore, it is not either in the interest of the society or the appellant by sending him again to the prison. This Court finds support from the judgment of the 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."

Learned counsel for the appellant place reliance upon the judgment of **Issak Nabab Shah vs. The State of Maharashtra (Crl. Appeal No.828 of 2020)** wherein, the Supreme Court reduced the sentence from 10 to 6 years in case of commercial quantity under the the Narcotic Drugs and Psychotropic Substances Act, 1985 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."

A perusal of the custody certificate placed on record by the learned State counsel reveals that the appellant has undergone about 6

years i.e. 5 years, 9 months and 5 days and it further shows that he is not involved in any other criminal case.

Considering the age of accused, aggravating and mitigating circumstances, while maintaining balance between deterrence against crime viz-a-viz re-formative approach of punishment, this Court deems it appropriate to reduce the period of sentence of the appellant to the period already undergone.

In view of the above, the appeal is partly allowed. The impugned judgment of conviction dated 27.7.2012 is upheld. However, the sentence imposed upon the appellant is reduced to the period already undergone. The sentence of fine is ordered to remain intact.

November 29, 2022
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No