

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

CRA-S-4081-SB-2015 (O&M)

Date of decision : 18.11.2022

Sonu @ Choru

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Aditya Jain, Advocate
for the appellant.

Mr. Shubham Kaushik, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Challenge laid in this appeal is to the judgment of conviction dated 08.01.2015 and order of sentence of the even date, passed by the trial Court, whereby the appellant was convicted for offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) and was sentenced to undergo rigorous imprisonment for a period of 02 years and to pay a fine of Rs. 20,000/- with default clause.

Brief facts of the case are that on 10.09.2012, the police party, headed by ASI Suresh Kumar, while on a patrol duty, noticed a person coming on foot from the side of Mandi Gobindgarh. On seeing the police party, the said person tried to turn but he was apprehended by the police party and on inquiry, the accused disclosed his name and whereabouts. The accused was apprised of his rights to be searched either in the presence of the Magistrate or a Gazetted Officer, to which, he reposed faith in the Investigating Officer. Thereafter, the search of the accused was conducted and a bag was recovered from the pocket of the accused, from which, 255 grams of intoxicant powder was recovered.

Thereafter, the formalities were completed and *Challan* was presented before the Court.

On presentation of *Challan*, the trial Court framed the charge under Section 22 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 Inspector Gurmeet Singh, PW-2 ASI Sadhu Khan, PW-3 ASI Jaswinder Singh, PW-4 HC Harpreet Singh, PW-5 C. Navjinder Singh, PW-6 ASI Suresh Kumar and closed its evidence by giving up some witnesses being unnecessary against the accused.

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. 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 19.02.2016 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 Sursh Kumar 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 02 years, awarded by the trial Court, the appellant has

already undergone a period of 01 year, 10 months and 14 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 10 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 2012 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 on 19.02.2016, when the sentence of the appellant was suspended, 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 01 years, 10 months and 14 days of total sentence of 02 years 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. The imposition of fine of Rs.20,000/- is also waived off considering the fact that the appellant is just short of 01 month and 16 days of completing his sentence.

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

18.11.2022

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No