

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-579-SB-2016 (O&M)

Date of decision : 22.8.2022

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Jaswinder kaur @ Shinder Kaur

.....Appellant

vs.

State of Punjab

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Aditya Partap Singh, Advocate
Amicus Curiae for the appellant.

Mr.Sandeep Vermani, Additional Advocate General,
Punjab.

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H. S. Madaan, J. (Oral)

1. As per report received from CJM, Mansa, the appellant has since been arrested and sent to jail. There is no representation on behalf of the appellant. Mr. Aditya Partap Singh, Advocate, who is present in the Court is appointed as amicus curiae to assist the Court on behalf of the appellant. Necessary intimation be sent to High Court Legal Service Committee in that regard.
2. Custody certificate filed by the State counsel, be taken on record.
3. Appellant/accused Jaswinder Kaur @ Shinder Kaur,

then aged about 36 years, w/o Balwinder Singh, resident of village Tapa Mandi, District Barnala, being an accused in FIR No. 65 dated 22.8.2013, for an offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'the Act'), registered at Police Station Kot Dharmu, was tried by Judge, Special Court, Mansa, on the allegations that on 22.8.2013, when apprehended by the Police Party in the area of about ½ kms short of village Chhapiawali, she was found in possession of 15 kgs 100 gms of poppy husk in a bag without any license or permit. The trial ended in conviction of the appellant- accused for the offence for which she had been booked vide judgment dated 19.1.2016 and in terms of order passed on that very day, she was sentenced to undergo rigorous imprisonment for a period of 8 months and to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo imprisonment for a period of one month.

4. Feeling aggrieved by the said judgment of her conviction and order of sentence, the accused-convict had approached this Court by way of filing the present appeal, which was taken up on 11.2.2016 and was admitted for regular hearing. Recovery of fine was ordered to be stayed during pendency of the appeal. On an application under Section 389 Cr.P.C. having been filed by the appellant/accused, vide order dated 4.3.2016 the remaining sentence of imprisonment of the appellant was suspended during the pendency of appeal and she was ordered to be released on bail subject to her furnishing requisite bonds to the satisfaction of Chief Judicial Magistrate/Duty

Magistrate, Mansa.

5. However, later on, finding that she was trying to prolong the proceedings by mis-using the concession of suspension of sentence and grant of bail to her that benefit given to her vide order dated 4.3.2016, was withdrawn and a direction was issued to Chief Judicial Magistrate, Mansa, for issuance of non-bailable warrants of arrest and send her to jail. In terms of intimation received from Chief Judicial Magistrate, Mansa, the accused has since been arrested in this case on 13.8.2022. Now the appeal has come up for final hearing.

6. I have heard Mr. Aditya Partap Singh, Advocate, - amicus curiae on behalf of the appellant and learned State counsel, besides going through the record.

7. As far as conviction of the accused for offence under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 is concerned, no fault can be found with the same, since the prosecution, while bringing cogent and convincing evidence in the form of examining PW-1 ASI Angrej Singh, the Investigating Officer of the case and PW-4 ASI Parshotam Singh, the witness of recovery, had proved the recovery of contraband from possession of the accused on the day and from the place, as suggested by the prosecution. The accused is to be taken as in conscious possession of the contraband as she had failed to render any reasonable or plausible explanation for possession of the contraband in terms of Section 35 of the Narcotic Drugs and Psychotropic Substances Act, 1985 read

with Section 54, the requisite evidence is also available in that regard and on sample parcel being sent to the office of the Chemical Examiner, Punjab, Chandigarh, in terms of report Exhibit PW-2/G, it was found to be that of poppy husk. The prosecution has successfully proved its charge against the accused beyond the shadow of reasonable doubt. The judgment of conviction passed by the trial Court is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein. Thus no interference therewith is called for with regard to conviction of the accused.

8. However, on the point of sentence, in my considered view, some leniency to the appellant can be shown. In terms of the custody certificate placed on record by the State counsel, she has already undergone 3 months and 11 days out of 8 months of substantive imprisonment awarded to her. Even now she is in custody. She is not shown to be involved in any other criminal case. Keeping in view the fact that she is stated to be a poor woman, working as a daily wager and she has got three sons and a daughter to look after and further the recovery involved is less than commercial, however, more than small quantity, the sentence of imprisonment awarded to her is reduced to the one already undergone by her in this case, while keeping the fine part as intact.

9. Accordingly, the appeal challenging the impugned judgment, is allowed partly, in as much as, upholding the conviction of the appellant-accused – Jaswinder Kaur @ Shinder

Kaur, whereas the sentence part is modified as detailed above.

10. The appellant is stated to be lodged in District Jail, Mansa. On payment of fine, she be released from the custody. However, if she does not pay the amount of fine, then she is required to undergo rigorous imprisonment for one month in default of payment of fine. Necessary intimation be sent to Chief Judicial Magistrate, Mansa, in that regard.

22.8.2022
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(H.S. Madaan)
Judge

Whether speaking / reasoned	Yes / No
Whether reportable	Yes / No