

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

CRA-S-4848-SB-2014 (O&M)

Reserved on: 22.11.2022

Pronounced on : 29.11.2022

Mangal Singh

. . . Appellant

Versus

State of Haryana

. . . Respondent

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by: Mr. H.S.Randhawa, Advocate
Legal Aid Counsel for the appellant.

Mr. Anmol Malik, DAG, Haryana.

Kuldeep Tiwari, J.

Instant appeal has been directed against the judgment of conviction and order of sentence dated 12.09.2014 passed by Special Judge, (under The Narcotic Drugs and Psychotropic Substances Act, 1985) (hereinafter referred to as 'NDPS Act') Kurukshetra, whereby, appellant-accused was held guilty for commission of offence punishable under Section 15 of NDPS Act and sentenced to undergo rigorous imprisonment for a period of 2½ years and also sentenced to pay fine of Rs.40,000/- and in default of payment of fine, ordered to further undergo simple imprisonment for a period of four months.

Factual Matrix

The prosecution case in brief is that on 19.12.2013 at about 3.45 pm, one Gulab Singh Sub Inspector/In charge Police Post Gumthala-Garhu along with other police officials was present at the bridge of Saraswati river on

Pehowa-Kaithal Road in the area of village Gumthala-Garhu. From the side of Pehowa, appellant-accused was found coming on foot with a plastic sac and after seeing the police party, he halted and started walking briskly after taking an about turn. He was over-powered by the police officials on suspicion of his being in illegal possession of liquor. Upon checking the plastic sac, one red polythene was found and the same was found to be containing poppy straw. On weighing the substance, it was found to be of 4 kgs 200 grams and thereafter, the recovery proceedings were carried out. Two samples of 100 grams each were drawn and sample parcels were prepared. Remaining poppy straw was put in same plastic sac and a separate parcel of the same was prepared. All the parcels were sealed with two seals bearing monogram of "GS" and the sample seal impression sheets were also prepared upon which two seals bearing monogram of "GS" was affixed. The seal after use was handed over to HC Rajinder Kumar and the Seizure memo was prepared, which was attested by the appellant-accused by putting his thumb mark. Witnesses also signed the same and the written information was sent to the police station through Constable Karambir for registration of formal FIR upon which FIR No.478 dated 19.12.2013 under Section 15 of NDPS Act was registered at Police Station Pehowa, Kurukshetra. The disclosure statement of the appellant-accused was recorded. He was produced before the Station House Officer, who after making inquiries affixed his two seals bearing monogram of 'SC' on each parcel and also on both the sample seal impression sheets. Seizure memo , both samples and bulk parcel were attested by the Station House Officer. The inventory of the case property was got prepared by producing before the Court of SDJM, Pehowa. Thereafter, case property i.e. sample

parcels, bulk parcel and sample seal impression sheets were photographed before the Magistrate. 4 kilograms of poppy straw, one sample parcel of 100 grams and one sample seal impression sheet was deposited with Moharir Judicial Malkhana. One sample parcel weighing 100 grams and one sample seal impression sheet was deposited with MHC of police station for sending the same to Forensic Science Laboratory, Madhuban. After completion of investigation, Final Report under Section 173 Cr.PC was submitted before the Court. Appellant-accused was charge-sheeted under Section 228(1)(b) of Cr.PC for commission of an offence punishable under Section 15 of NDPS Act to which appellant-accused pleaded not guilty and claimed trial.

Apart from the documentary evidence, prosecution examined as many as 9 witnesses to prove its case. After completion of evidence of the prosecution, the appellant-accused was examined under Section 313 Cr.PC and all the incriminating evidence were put to him to which he denied. No defence evidence was adduced by the appellant-accused.

Learned Special Court, Kurukshetra after examining the entire evidence led by the prosecution held the appellant-accused guilty of offence punishable under Section 15 of NDPS Act and ordered to sentence as mentioned above.

Submissions by learned counsel for the parties

At the very outset, learned counsel for the appellant restricted his arguments to the extent of sentence awarded by the trial Court i.e rigorous imprisonment of 2½ years and a fine of Rs.40,000/-. He opted not to assail the finding of conviction. Therefore, this Court upheld the findings of conviction recorded by the trial Court vide judgment dated 12.09.2014.

Learned counsel for the appellant submitted that the appellant-accused has faced the agony of protracted trial for about nine years. During the trial, he remained on bail, however, he did not misuse the concession of bail. He further submitted that the appellant is not involved in any other criminal case. It was further submitted that the appellant is now 70 years old and no purpose will be served in by sending the appellant behind bars that too after about 7 years. He has already mended his way of life and joined the mainstream of the society. To support his arguments, learned counsel for the appellant placed reliance upon the judgment of Hon'ble Supreme Court in ***Sk. Sakkar @ Mannan vs. State of West Bengal, 2021(4) SCC 483*** wherein Hon'ble Supreme Court after considering the mitigating circumstances reduced the sentence to the period already undergone. The relevant extract of the said judgment is reproduced 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 further relied upon the judgment of Hon'ble Supreme Court in ***Issak Nabab Shah vs. The State of***

Maharashtra (Crl. Appeal No.828 of 2020) decided on 03.12.2020 wherein Hon'ble Supreme Court has held 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.”

Learned State counsel has not disputed the factual submissions made by the counsel for the appellant. However, he has submitted that the learned trial Court has rightly sentenced the appellant.

Reasons

This Court has considered the legal submissions made by learned counsel for the appellant and find merit in his contention and that the sentence of 2½ years awarded by the trial Court can be reduced to already undergone i.e. 7 months and 29 days on the following reasons:

- (i) Appellant is 70 years old man and facing the agony of protracted trial for about 9 years.
- (ii) As per custody certificate, the appellant was granted bail by this Court on 17.03.2016, however, he did not misuse the concession of same.
- (iii) The appellant is not involved in any other criminal case.
- (iv) The appellant has mended his way of life and joined the mainstream of the society.

Conclusion

Considering the case of accused, aggravating and mitigating circumstances as discussed above and in view of legal proposition settled by Supreme Court, the appeal is partly allowed. The impugned judgment of conviction dated 12.09.2014 is upheld, however, sentence of the appellant is reduced to the period already undergone i.e. 7 months and 29 days. The sentence of fine is ordered to remain intact.

(KULDEEP TIWARI)
JUDGE

29.11.2022
sonia

Whether speaking/non-speaking?
Whether reportable?

Yes/No
Yes/No