

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

CRA-S-702-SB-2017

Date of decision:-27.4.2022

Harnam Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Shivender Singh, Advocate
for the appellant.

Mr.Anmol Singh Sandhu, AAG, Punjab.

H.S. MADAAN, J.

Appellant/accused Harnam Singh, aged about 33 years, resident of village Fatehgarh Kanian, District Moga along with his co-accused Tashwinder Kaur @ Toshi and Gurmeet Kaur wife of Kala Singh were sent up to face trial by SHO Police Station Dharamkot in case FIR No.125 dated 28.7.2013, on the allegations that on 28.7.2013, a police party led by SI Palwinder Singh while being present at bridge of canal in the area of village Kamalke Khurd, intercepted motorcycle bearing registration No.PB67-5993 make Hero Honda Deluxe, which was being driven by Harnam Singh accused having a bag slung on his shoulder, which was resting on the rear seat of the motorcycle, whereas Tashwinder Kaur @ Toshi was sitting pillion on the motorcycle and holding the bag in her hands. The bag was searched as per rules and it was found to contain opium wrapped in glazed paper. After taking out a sample of 10 gms. from the recovered opium, the remaining one being weighed came out to

be 490 gms.. The sample and remainder were converted into sealed parcels and were taken into police possession. The motorcycle was also seized. The accused were arrested in this case. The FIR was got registered. The investigation in the case started.

Accused Harnam Singh and Tashwinder Kaur @ Toshi disclosed that they had purchased the recovered opium from Gurmeet Kaur wife of Kala Singh, resident of village Kathgarh, Tehsil and District Fazilka. She was also arrested in this case. The sample was sent to the office of Chemical Examiner, Punjab and as per report received therefrom, it was found to be that of opium. On completion of investigation, accused were sent up to face trial.

On conclusion of trial vide judgment dated 19.1.2017 passed by the trial Court, accused Tashwinder Kaur @ Toshi and Gurmeet Kaur were acquitted of the charge framed against them, whereas Harnam Singh was convicted for the offence under Section 18 of NDPS Act and vide order dated 23.1.2017, he was sentenced to undergo rigorous imprisonment for six months and to pay a fine of ₹3,000/- and in default thereof to further undergo rigorous imprisonment for a period of one month.

Feeling aggrieved by the said judgment of conviction and order of sentence, the accused/appellant Harnam Singh had preferred the present appeal before this Court, which came up for hearing on 22.2.2017 when it was admitted for regular hearing and recovery of fine was ordered to remain stayed during the pendency of the appeal. On an application having been filed by the appellant/accused for suspension of his sentence

of imprisonment during the pendency of appeal, the same was allowed on 7.4.2017. Now the case has come up for regular hearing.

I have heard learned counsel for the appellant and learned State counsel besides going through the record.

At the very outset, learned counsel for the appellant states that he does not challenge the judgment on the point of conviction but wants to make submissions with regard to sentence only.

Learned counsel for the appellant has contended that the appellant/accused Harnam Singh was of young age of 33 years at the time of recovery; he is married having two children; he is only earning member of the family and he is a first offender. He further contended that the appellant/accused has already undergone imprisonment of 3 months and 24 days as per the custody certificate dated 6.4.2017 issued by Superintendent, Central Jail, Faridkot; the recovery involved in this case amounts to non-commercial quantity, as such a lenient view in the matter be taken.

Whereas learned State counsel has contended that sentence awarded to the appellant is not on higher side and does not call for any reduction.

After hearing the learned counsel for the parties, I find that the prayer made by learned counsel for the appellant deserves to be accepted for various reasons. Firstly, the contraband recovered from the appellant/accused amounts to non-commercial quantity. Secondly, the appellant is not shown to have any past criminal record. Similarly, there is nothing on record to show that he had indulged in any criminal activity

after suspension of his remaining sentence and releasing him on bail during the pendency of the appeal. Furthermore, he has already undergone more than half of the substantive sentence awarded to him.

In that way, while upholding the judgment of conviction passed against the appellant/accused, the order of sentence is modified and his sentence is reduced to one already undergone by him in this case. Whereas, the fine part is kept as intact. The appellant/accused may deposit the amount of fine in the trial Court within one month from today and in case of default of payment of fine, the appellant/accused shall be liable to be taken into custody and made to undergo sentence in default of payment of fine.

As such the appeal challenging the impugned judgment stand disposed of with above modification in sentence.

Necessary intimation be sent to Chief Judicial Magistrate, Moga for necessary compliance.

27.4.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes