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

CRM-16899-2022 in/and
CRA-S-5139-SB-2014 (O&M)
Date of decision : 12.05.2022

Jai Bhagwan @ Lovely

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Krishan Daaria, Advocate for the appellant.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

CRM-16899-2022

This is an application filed under Section 482 of Cr.P.C. for fixing the actual date of hearing in the main appeal which is stated to be admitted vide order dated 15.12.2014.

Learned counsel for the applicant-appellant has submitted that the applicant-appellant was convicted vide judgment and order of sentence dated 17.11.2004 under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and was sentenced to undergo rigorous imprisonment for a period of six months, out of which, he has already undergone two months of actual custody. It is further submitted that the applicant-appellant

is suffering from heart ailments and he wishes to go to his daughter who is residing in Canada for his treatment and thus, prays that the present application be allowed and the main appeal be heard.

Notice in the application.

On advance notice, Mr. Sarabjit S. Cheema, AAG, Punjab, appears and accepts notice on behalf of the non-applicant/State of Punjab and has submitted that he has no objection in case the present application is allowed and the main appeal is heard today itself for final disposal.

In view of the aforesaid facts and no objection from the opposite side, the present application is allowed and the main appeal is taken on Board today itself for final disposal.

Main case

Challenge in the present appeal is to the judgment dated 17.11.2014 passed by the Judge, Special Court, Patiala, whereby the present appellant has been convicted under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as “the Act of 1985”) in FIR No.44 dated 29.06.2012 registered under Section 18 of the Act of 1985 at Police Station Sanaur.

Learned counsel for the appellant has submitted that although the appellant is not challenging his conviction but however, has argued that the appellant would be satisfied in case, a lenient view is taken with respect to the sentence which has been awarded to him. In this regard, learned counsel for the appellant has submitted that the FIR in the present case is of the year 2012 and thus, the appellant has suffered agony of trial/bail/appeal

for all these years and the appellant was granted the concession of bail and he has never misused that concession. It is further submitted that the appellant is about 44 years of age and he is the sole bread winner of the family. The appellant has already undergone 2 months of actual custody out of the sentence of 6 months rigorous imprisonment awarded to him. It is also submitted that the appellant is not involved in any other case. It is further submitted that the appellant is suffering from a heart disease and thus, wishes to go to Canada for treatment and regarding the same, the Medical Certificate (Annexure A-1) has been produced.

In support of his arguments, learned counsel for the appellant has relied upon judgments of co-ordinate Benches of this Court in **CRA-S-3505-SB-2017 decided on 07.10.2017 titled as “Rupesh Kumar @ Kala vs. State of Punjab” reported as 2017(4) RCR (Criminal) 668 and in Crl. Revision No.1239 of 2011 decided on 12.01.2018 titled as “Ajay Kumar and another vs. State of Punjab”, reported as 2018(1) Law Herald 514.**

Learned counsel for the State has stated that the judgment of the Court below has been passed after considering the entire evidence and material on record. The other factual aspects have not been rebutted by the learned counsel for the State. He has also produced on record the custody certificate of the appellant, which is taken on record, as per which, the period of custody, as stated by the learned counsel for the appellant, stands reiterated.

This Court has heard the learned counsel for the parties and has gone through the paper book.

The brief facts of the present case are that on 29.06.2012, ASI

Sukhdev Singh along with police party were present at Jorian road in connection with patrolling and in search of suspected persons, where the present appellant was apprehended and contraband in the shape of opium weighing 500 grams (less than the commercial quantity which is 2.5 kg) was recovered from him and from the same, two samples each containing 10 grams were taken out and the same alongwith bulk property weighing 480 grams were converted into parcels and the same were sealed with the seal of Investigating Officer and the sample seal was also prepared and the same was handed over to ASI Gian Singh. The case property was taken into police possession and the site plan etc. were prepared and after completion of the investigation at the spot, the case property and the appellant was produced before the officiating SHO SI Gurcharan Singh, who after verifying the entire facts, put his counter seal on the aforesaid case property/sample and thereafter, the case property was deposited with the MHC. SI Gurcharan Singh has prepared the inventory report and also requested to send the case property in Judicial Malkhana and thereafter, the case property alongwith the appellant was produced before the Area Magistrate, Patiala who had seen the same and attested the inventory report and had passed the necessary order. A bulk parcel and sample parcel were deposited in Judicial Malkhana, Patiala and on return, deposited the receipt with the MHC. On receipt of the report of the Chemical Examiner, the challan was prepared and presented in the Court and thereafter, the charges were framed under Section 18 of the Act of 1985.

The prosecution, in order to prove its case, had examined five witnesses which are as follows:-

- 1) ASI Gurmit Singh, the then MHC of the police station as PW1
- 2) Retired Inspector Gian Singh, recovery witness as PW2,
- 3) ASI Sukhdev Singh-Investigating Officer as PW3,
- 4) SI Gurcharan Singh, the then officiating SHO of the concerned Police Station as PW4;
- 5) HC Sukhchain Singh, who took the sample to the office of chemical examiner as PW5

The trial Court had considered the evidence of the said witnesses as well as the documents produced on record and after perusing the same, convicted the present appellant under Section 18 of the Act of 1985 and sentenced him as follows:-

<i>Name of the accused</i>	<i>Under Section</i>	<i>Punishment</i>	<i>Fine</i>	<i>In default of fine</i>
Jai Bhagwan	18 of the NDPS Act	RI for 6 months	Rs.5000/-	SI for 2 months

The period already undergone during the investigation/trial shall be set-off from the sentence awarded.”

Aggrieved by the said judgment, the appellant has filed the present appeal.

In the present case, the conviction of the present appellant is proved from the examination of PW2-Recovery Witness and also from the evidence of PW3-Investigating Officer. The recovery memo has also been duly proved on record as Ex.PC. Sample parcels have also been proved on record as Ex.MO1 & bulk parcel as Ex.MO2.

The abovesaid evidence, alongwith the evidence of the other witnesses proves the case of the prosecution beyond reasonable doubt

and thus, the present appellant has rightly been convicted under Section 18 of the Act of 1985. Moreover, the appellant has not challenged the said conviction during the course of his arguments in the present case.

Insofar as the sentence which has been awarded to the appellant is concerned, this Court is of the view that the incident in the present case is of the year 2012 and the appellant has never misused the concession of bail granted to him. The appellant is about 44 years of age and is the sole bread winner of the family. As per the custody certificate, the appellant has already undergone 2 months of actual custody out of total sentence awarded i.e. 6 months of rigorous imprisonment. The appellant is also stated to be having heart problem for which, he needs medical treatment. A co-ordinate Bench of this Court in ***Rupesh Kumar @ Kala's case*** (supra) has held as under:-

“Appellant had faced trial in FIR No. 58 dated 1.6.2016 registered at Police Station City Budhlada, District Mansa under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (‘the Act’ for short). The trial Court vide judgment/order dated 5.9.2017 convicted the appellant for commission of offence punishable under Section 22 of the Act, and sentenced him to undergo two years rigorous imprisonment and to pay a sum of Rs.5000/- as fine and, in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. Hence, the present appeal by the accused-appellant.

As per the prosecution case, appellant was found in conscious possession of 510 tablets of “Almax-05” containing the salt “Alprazolam” (51 strips of tablets of Alprazolam, each of 10 tablets) without any permit or

licence.

During the course of arguments, learned counsel for the appellant has not challenged the conviction of the appellant under Section 22 of the Act as ordered by the Trial Court but has submitted that the sentence qua imprisonment of the appellant be reduced to the period already undergone by him. Learned counsel for the appellant has further submitted that the appellant is a poor man and confined in jail and has no means to pay the fine. Appellant is the only bread earner of the family. In support of his arguments, learned counsel has relied upon the judgment in Mukesh vs. State of M.P. 2015(1) RCR(Criminal) 251 where in Hon'ble the Supreme Court has reduced the sentence to already undergone.

Learned counsel for the appellant has also placed reliance on the judgment of this Court in Balvinder Singh vs. State of Haryana 2012 (2) RCR(Criminal) 458, wherein it was held that the contraband recovered from the accused does not fall within the definition of commercial quantity and the ends of justice would be best met if the substantive sentence of imprisonment be reduced to that already undergone by him.

A perusal of the custody certificate of the appellant, placed on record reveals that the appellant has undergone about one year three months and seven days of actual sentence and is not involved in any other criminal case. Appellant has been facing criminal proceeding since the year 2016. Moreover, recovery of 510 tablets of "Almax05" containing the salt "Alprazolam" effected from the possession of the accused falls in the ambit of non-commercial quantity.

Keeping in view the submissions made by learned counsel for the appellant, it would be just and expedient to

reduce the sentence qua imprisonment of the appellant to the period already undergone by him.”

Thus, in view of the above said facts and circumstances, as also the judgments relied upon by the learned counsel for the appellant, sentence awarded to the appellant is ordered to be reduced to the period already undergone by him. In addition to the fine of Rs.5,000/- imposed by the learned trial Court, compensation to the tune of Rs.10,000/- is also being imposed. The above said reduction of sentence to the period already undergone will be subject to the the appellant's depositing a fine of Rs.5,000/- with the concerned trial Court within a period of two months from today and the compensation of Rs.10,000/- in the High Court Lawyers Welfare Fund within a period of two months from today.

It is made clear that in case the above-said amount of Rs.5,000/- and Rs.10,000/- are not deposited by the appellant within a period of two months from today, as directed herein above, the present appeal will be deemed to have been dismissed.

With the above said observations, the present appeal is disposed of.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

12.05.2022
Pawan

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No