

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

1. **CRA-S-1630-2019 (O&M)**
Judgment reserved on: 06.04.2022
Date of Pronouncement: 29.04.2022

BALJINDER SINGH ... Appellant
Versus

STATE OF HARYANA ... Respondent

2. **CRA-S-1835-2019 (O&M)**
SAMINDER SINGH ... Appellant
Versus

STATE OF HARYANA ... Respondent

3. **CRA-S-1632-2019 (O&M)**
GURCHAND SINGH ... Appellant
Versus
STATE OF HARYANA ... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present : Mr. Kanwar Satbir Singh, Advocate
for appellant in CRA-S-1630-2019.

Mr. Jasvir Dhaliwal, Advocate
for appellant in CRA-S-1835-2019.

Mr. Nirmaljeet Singh Sidhu, Advocate
for appellant in CRA-S-1632-2019

Mr. Kanwar Sanjiv Kumar, AAG, Haryana.

VINOD S. BHARDWAJ. J.

By this common order, a batch of three appeals arising out of
common judgment dated 25/28.03.2019 passed by the Judge, Special Court,

Hisar under the Narcotic Drugs and Psychotropic Substances Act, 1985 are being decided.

That the facts of the case in brief are that on 23.09.2016, the police party was present at Hisar by-pass near Maharana Partap Chowk in connection with routine patrolling duty, where they received a secret information that one truck bearing no.RJ07-GA-6796 is coming from Delhi side and the persons boarded therein are carrying some narcotic substance, and in the event of conducting a raid, the said persons can be apprehended with contraband. The secret information was sent to Deputy Superintendent of Police, Head Quarters, Hisar and a nakabandi was conducted.

The truck in question was stopped and three persons were found sitting in the truck. They disclosed their names as Baljinder Singh son of Babu Singh, Saminder Singh son of Jarnail Singh and Gurchand Singh son of Puran Singh (the appellants herein), who were served with statutory notice under Section 50 of the Narcotic Drugs and Psychotropic Substances, Act 1985 (hereinafter to be referred to as “the Act”) and offered the option to exercise their right of being searched before a Magistrate or a Gazetted Officer; whereupon the appellants-accused showed their willingness to be searched in the presence of a Gazetted Officer. Shri Bhagwan Dass, DSP, reached the spot in his government vehicle and the search was conducted in his presence. Firstly, the appellant Baljinder Singh was searched and from the right pocket of his trouser, opium weighing 450 grams was recovered. Thereafter, upon search of appellant Saminder, similar quantity of opium was recovered from the pocket of his *kurta*. Lastly, the appellant Gurchand was searched and he himself disclosed carrying 34.700 Kgs. of poppy husk. The samples were duly drawn from the contraband so seized and they were duly sealed and stamped.

The case property was produced before the Judicial Magistrate Ist Class, Hisar in compliance of Section 52-A of the Act and the inventory of the case property was duly certified by the Magistrate himself. appellants-accused Baljinder Singh and Saminder Singh were booked and charge sheeted for the commission of offence under Section 18 of the Act while appellant-accused Gurchand Singh was booked and charge sheeted for the commission of offence punishable under Section 15 of the Act.

The prosecution examined as many as 11 witnesses to prove its case. Statements under Section 313 of the Cr.P.C. were also recorded, wherein the appellants-accused denied each and every incriminating evidence/material produced against them during the trial, and they claimed that the Investigating Officer had demanded illegal gratification from them on account of over-loading of the truck and when they refused to accede to his illegal demand, they were falsely implicated in the instant false case. However, no evidence had been led by the appellants-accused in their defence. After considering the rival submissions advanced by the learned counsel for the respective parties, the Special Judge, Hisar, vide his judgment dated 25.03.2019, convicted the appellants-accused Baljinder Singh and Saminder Singh for the commission of offence punishable under Section 18 of the Act and the appellant-accused Gurchand Singh under Section 15 of the Act. The appellants-accused were sentenced to undergo rigorous imprisonment for a period of 10 years each with fine of Rs.1,00,000/- each, and further to undergo two years' rigorous imprisonment in default of payment of fine. Hence, the present appeal.

On 14.03.2022, the learned counsel appearing on behalf of the respective appellants had sought some time to seeks instructions from their clients to give up their claim insofar as the challenge to conviction is concerned and to

confine the challenge to the order regarding sentence only.

Today on resumed hearing, the counsel appearing on behalf of the respective appellants have specifically contended that they have sought instructions from their clients and they do not wish to raise any challenge to the judgment of conviction and would confine their prayer only to the extent of reduction of sentence awarded to the appellants.

While doing so, the learned counsel for the respective appellants submitted as under:

Submissions on behalf of appellant Baljinder Singh in CRA-S-1630-2019

Learned counsel appearing on behalf of appellant-accused Baljinder Singh submitted that the appellant is a poor person and he is the sole bread earner of his family. He further submits that he has aged parents, minor children and his wife to take care of. It is also submitted that the recovery effected from the appellant is of non-commercial quantity and that out of total substantive sentence of 10 years, the appellant has already undergone an actual sentence of 01 year, 09 months and 26 days. He further submits that the appellant is not involved in any other case under the NDPS Act.

Submissions on behalf of appellant Saminder Singh in CRA-S-1835-2019

The said appellant has also reiterated that he is a poor person. Furthermore, being sole bread earner in his family, he has to take care of his aged mother, minor children and his wife. He further submitted that as against the total sentence of 10 years, he has already undergone an actual custody of 02 years, 02 months and 07 days and that he is also not involved in any other case under NDPS Act.

Submissions on behalf of appellant Gurchand Singh in CRA-1632-2019

The learned counsel appearing on behalf of appellant-accused

Gurchand Singh contends that the age of the appellant was more than 53 years at the time of his conviction and that he is a poor person. His daughter is unmarried and that he is the sole bread earner of his family. It is also contended that the quantity of the contraband recovered from the appellant was not commercial and that the appellant does not have any other criminal antecedents. He further submitted that as against the total substantive sentence of 10 years, he has already undergone more than two years.

Learned counsel for the appellants placed reliance upon the judgment passed by this Court in the matter of **Amarjit Singh @ Babbu Vs. State of Punjab** bearing **Criminal Appeal No.S-162-SB-2015 decided on 29.01.2015**, wherein the period of sentence for the commission of offence punishable under Section 18 of the Act was reduced to the period already undergone considering that the quantity of recovered contraband was less than commercial quantity. The accused in the said case had undergone 01 month and 26 days against the sentence of 01 year. Reference has also been made to the judgment passed in the matter of **Dharambir Vs. U.T. Chandigarh** reported as **(2004) 1 RCR (Criminal) 704**, wherein after considering that the recovered quantity was not commercial and that the accused had been sentenced to undergo rigorous imprisonment for a period of 10 years with fine of Rs.1,00,000/-, the sentence of the accused therein was reduced to the period already undergone (01 year 04 months). Reference has also been made to the judgment of this Court passed in the matter of **Jagat Singh Vs. State of Haryana** reported as **(2015) 1 RCR (Criminal) 837**, where in the case of convict having been found in possession of 1 Kg of *Charas* and having been sentenced to undergo rigorous imprisonment for 10 years and fine of Rs.1,00,000/-, the sentence was reduced to the period already undergone (03 years 18 months).

The learned State counsel has not raised any serious challenge to the

prayer regarding the quantum of sentence made by the counsel for the appellants. He has also not disputed that as per the custody certificates, so furnished, none of the appellants-accused is involved in any other case of similar nature and also that they are not previous convicts.

I have considered the rival submissions advanced on behalf of the respective parties and have also taken into considered the precedent judgments cited by them.

Section 15 of the Act deals with the punishment for contravention in relation to poppy straw. As per the said Section, where the contravention includes quantity lesser than commercial quantity but great than small quantity, the punishment to be imposed may extend to 10 years with fine, which may extend to Rs.1,00,000/-. The recovery of contraband so effected from appellant Gurchand Singh is 34.700 Kgs. of poppy straw. The small quantity as per notification is 1000 grams and commercial quantity is 50 Kgs. Hence, the recovery of contraband is less than commercial quantity. Section 18 of the Act deals with contravention in relation to opium and where the contravention involves less than commercial quantity, the sentence may extend to 10 years with fine which may extend to Rs.1,00,000/-. The commercial quantity of opium is 2.5 Kgs, while the small quantity is 25 grams. Since the other two appellants were found in conscious possession of 450 grams of opium each, the recovered quantity is non-commercial.

The following mitigating circumstances emerge from the consideration of above narrated fact:

- (i) The offence in question relates to the year 2016 and the appellants have already faced the agony of criminal proceedings for a period of nearly 6 years.
- (ii) The quantity of the recovered contraband is of non-

commercial quantity.

- (iii) Appellants Baljinder Singh and Saminder Singh have small children and aged parents, whereas appellant Gurchand Singh has a daughter of marriageable age.
- (iv) The appellants do not suffer from any criminal antecedents and do not have any previous involvement in any offence falling under NDPS Act.
- (v) The actual period of sentence undergone by the appellants is as under:

Baljinder Singh: 01 year, 09 months and 26 days;

Saminder Singh: 02 years, 02 months and 07 days; and

Gurchand Singh: 02 years and 12 days.

The ratio of the precedent judgments noticed above has not been disputed by the counsel for the State.

The sentence awarded to the appellants is the maximum as provided for the offences in question. A lenient view can be extended in favour of a person who does not suffer from any criminal antecedents and has no previous involvement in such offences.

Taking into consideration the totality of the facts and circumstances noticed above as well as the precedent judgments and keeping in mind the deterrent factors including the possibility of reformatory behaviour, I am of the opinion that the philosophy of penology needs to strike a balance, so that it is proportionate to the harm caused and at the same time is not too lenient or inadequate. The sentences should have deterrent effect on the potential of the wrong-doer and may also be commensurate with the seriousness of the offence.

The discretion in the quantum of sentence has to be exercised giving due regard to

the larger interest of the society. I am, thus, of the opinion that the order of sentence deserves to be modified in the light of the citations noticed above.

Consequently, the sentences of convict Baljinder Singh and Saminder Singh, who have been sentenced under Section 18 of the Act, are reduced from rigorous imprisonment of ten years to rigorous imprisonment of five years with fine of Rs.50,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year; further the sentence of convict Gurchand Singh, who has been sentenced under Section 15 of the Act, is also modified and the sentence of rigorous imprisonment of ten years is reduced to rigorous imprisonment for five years. The amount of fine of Rs.1,00,000/-, so imposed upon convict Gurchand Singh, is also reduced to Rs.50,000/- and in default of payment thereof, the rigorous imprisonment of two years is also reduced to rigorous imprisonment of one year.

The appeals are, thus, partly allowed qua the order on quantum of sentence, while the judgment of conviction passed by the Judge, Special Court, Hisar is upheld.

(VINOD S. BHARDWAJ)
JUDGE

April 29, 2022
rajender

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>