IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-76-SB-2006(O&M)
Date of decision:-16.8.2022

Gurmej Singh

...Appellant

Versus

The State of Punjab

...Respondent

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

Present: Mr.Rakesh Kumar, Advocate for the appellant.

Mr.Anmol Singh Sandhu, AAG, Punjab.

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H.S. MADAAN, J.

1. Appellant/accused Gurmej Singh was tried by Judge, Special Court, Kapurthala in case FIR No.103 dated 23.10.1997 for an offence under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '**the Act**'), Police Station Sadar, Phagwara and in terms of judgment dated 28.11.2005, the accused/appellant was convicted in that case for the offence for which he was booked and vide order of the even date, he was sentenced to undergo rigorous imprisonment for 4 years and to pay a fine of Rs.25,000/- and in default thereof to further undergo rigorous imprisonment for a period of 5 months.

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2. Briefly stated, the facts of the case as per prosecution version are that on 23.10.1997, a police party headed by SI Balwinder Singh (hereinafter referred to as the Investigating Officer/I.O.) from Police Station Sadar, Phagwara, while travelling in Government Gypsy bearing registration No.PB-09-5033 was going from Phagwara towards village Darvesh in connection with patrolling and checking of anti social elements and when the vehicle carrying the police party had reached at turning of village Manawali after crossing village Hadiabad, the accused was spotted coming from the side of village Manawali carrying a bag having contents; he was apprehended on the basis of suspicion and on being inquired, he disclosed his name as Gurmej Singh son of Malook Singh, resident of village Sunra Rajputan; since the IO suspected that some contraband was there in the bag being carried by the accused, he informed the accused accordingly stating that the accused had a right to get his search conducted in presence of some gazetted officer or a Magistrate; the accused opted to get the search conducted from a gazetted officer; a memo in that regard was prepared; thereafter, Pritam Singh, DSP Sub Division, Phagwara, a gazetted police officer was requested by sending wireless message to reach at the spot; the said officer accordingly arrived there; thereafter in presence of DSP Pritam Singh, the bag carried by the accused was searched, which was found to contain poppy husk; the Investigating Officer drew sample of 250 gms. of poppy husk and the remaining poppy husk on being weighed came out to be 29 kgs. 750 gms.; it was retransferred in the same bag and then the sample and the bag containing residue poppy husk were converted into parcels sealed with the

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seal of DSP bearing inscription PS; specimen seal impression was taken on the sample chit and all the articles were taken into police possession vide recovery memo; the seal after use was handed over to the SHO; ruqa was sent to the police station, which formed basis for registration of the formal FIR.

3. The accused was accordingly arrested in this case. The site plan of the place of recovery was prepared. Statements of witnesses were recorded. On reaching to the police station, the Investigating Officer deposited the case property with the MHC and put the accused in the lock up.

4. On the next day i.e. on 24.10.1997, the Investigating Officer took the accused along with the case property for the purpose of production before the Illaqa Magistrate. After doing that the case property was again deposited with the MHC.

5. During the investigation, a sample parcel was sent to the office of Chemical Examiner, Punjab and as per report received therefrom, it was found to be that of poppy husk. On completion of investigation, accused was challaned and sent up to face trial.

6. On presentation of challan in the Court of learned Judge, Special Court, Kapurthala, she supplied copies of documents relied upon therein to the accused free of costs as provided under Section 207 Cr.P.C. Then observing that prima facie charge for an offence under Section 15 of the Act was disclosed against the accused, he was charge-sheeted accordingly, to which, he pleaded not guilty and claimed trial.

7. During the course of its evidence, the prosecution examined

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ASI Jagjit Singh as PW1, Constable Rajinder Singh as PW2, HC Jasbir Singh as PW3, SI Balwindwer Singh as PW4, ASI Karamjit Singh as PW5 and DSP Pritam Singh as PW6. The prosecution relied upon various documents.

8. With that the prosecution evidence got concluded.

9. Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against him in the prosecution evidence were put to him but he denied the allegations contending that he is innocent and had been falsely involved in this case; further stating that earlier the police had challaned his father along with his mother in a false case due to enmity; thereafter, he has been booked in this case wrongly; he was a minor aged 16 ½ years at the time of alleged recovery.

10. During his defence evidence, the accused examined Constable Mukhtiar Singh as DW1.

11. After hearing arguments, learned trial Court convicted and sentenced accused as mentioned above, which left him aggrieved and he has filed the present appeal, which came up for hearing on 13.1.2006 when it was admitted for regular hearing and on an application under Section 389 Cr.P.C. having been filed by the appellant/accused for suspension of his sentence of imprisonment during the pendency of appeal, the same was allowed on 27.1.2006.

12. Now the appeal has come up for final hearing.

13. I have heard learned counsel for the appellant – accused - convict, learned Assistant Advocate General for the State of Punjab

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besides going through the record.

14. In this case the prosecution has successfully proved that the accused was found in conscious possession of 30 kgs. of poppy husk on 23.10.1997 in the area of village Manawali, which he was carrying without any licence or permit. The witnesses of recovery, namely, PW4 SI Balwinder Singh, PW5 ASI Karamjit Singh besides PW6 Sh.Pritam Singh, DSP since promoted as S.P. have fully supported the prosecution story in that regard. They were cross-examined at length on behalf of the accused but they remained unshattered and unanimous regarding material details of the episode. The official witnesses had no reason to involve the accused in this case wrongly, challan him falsely or to depose against him to secure his conviction. I find the depositions of these witnesses to be natural and worthy of reliance.

15. From the link evidence in this case in the form of statement of PW3 HC Jasbir Singh with whom the case property had been deposited while he was working as MHC of Police Station Sadar, Phagwara and that of Constable Rajinder Singh PW2, who had taken the sample parcel given to him by MHC Jasbir Singh to the office of Chemical Examiner, Punjab, it comes out that the no tampering therewith had taken place between the period it remained in their possession. PW2 Rajinder Singh and PW3 HC Jasbir Singh tendered in evidence their affidavits Ex.PC and Ex.PD, respectively.

16. Furthermore, on report given by Chemical Examiner, Punjab, it comes out that on analysis the sample was found to be that of poppy husk. No violation of any mandatory provision of law comes out to be

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there. The accused has failed to render any reasonable or plausible explanation for his alleged false implication in this case. Although learned counsel for the appellant has argued that no independent witness was joined with the police party, which makes the recovery suspicious but I find little merit in this objection since it was a chance recovery and not based upon secret information. Furthermore, in absence of any enmity of the official witnesses of recovery with the accused and in the manner in which they deposed, their statements are to be taken at par with independent witness. Therefore, this objection is without any merit.

17. Another objection raised is with regard to non compliance of Section 50 of the Act. Again this argument is without any force. The Investigating Officer SI Balwinder Singh and other witnesses of recovery have specifically stated that accused was informed of his right to get his search conducted in presence of a gazetted officer or a Magistrate and accused had opted to get the search conducted in presence of a gazetted officer, thereafter, DSP Pritam Singh, a gazetted officer was summoned to the spot and search was conducted in his presence and consent memo was also prepared in that regard. As such, Section 50 of the Act was duly complied with. Nevertheless the Apex Court in judgment ***State of Himachal Pradesh Versus Pawan Kumar 2005(2) RCR(Cri.) 621*** has observed that Section 50 of the Act applies to personal search of the accused and not with regard to the search of bag in his possession.

18. Therefore, I do not find any illegality and irregularity in the judgment passed by the learned trial Court. Rather it is based upon proper appraisal and appreciation of evidence and correct interpretation of law.

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The prosecution had successfully proved its case against the accused beyond a shadow of reasonable doubt and he was rightly convicted by the trial Court.

19. Now coming to the sentence part. The trial Court had sentenced the accused to undergo rigorous imprisonment for 4 years and to pay a fine of Rs.25,000/- and in default thereof to further undergo rigorous imprisonment for a period of 5 months.

20. As per the custody certificate placed on record by the State counsel, the appellant/accused has undergone 1 year, 10 months and 16 days of total sentence including remissions, which includes post conviction period of 10 months and 16 days. The actual undergone period including custody as undertrial is shown to be 10 months and 16 days. The appellant/accused is not shown to be involved in any other criminal case.

21. Learned counsel appearing for the appellant/accused has contended that the appellant is a poor person and is only bread winner of his family; he is not a previous convict, therefore, sentence of the appellant/accused be reduced substantially.

22. Learned State counsel states that the Court may pass any suitable order in that regard.

23. Keeping in view the facts and circumstances of the case, the period of imprisonment already undergone by the appellant/accused, the mitigating circumstances explained by learned counsel for the appellant that the appellant was of young age at the time of his conviction, further about 24 years have elapsed from the date of recovery and 17 years from

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the date of conviction; there is nothing on record to show that he had indulged in any criminal activity after suspension of his remaining sentence and his release on bail during the pendency of the appeal, I find that the sentence of imprisonment awarded to the appellant should be reduced to one already undergone by him in this case.

24. 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 is directed to 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 by Chief Judicial Magistrate, Kapurthala by issuing Non-bailable warrants of arrest against him.

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

Intimation be sent to Chief Judicial Magistrate, Kapurthala for necessary compliance.

16.8.2022 **(H.S.MADAAN)**
Brij **JUDGE**

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes

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