

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110

CRA-S-1159-2021(O&M)

Date of Decision:11.05.2022

Pawan and another

.....Appellants

Versus

State of UT Chandigarh

.....Respondent

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

Present: Dr. Naresh Kaushik, Advocate,
for Mr.T.P.S. Bhatti, Advocate,
for the appellants.

Mr. Amit Kumar Goyal, Addl. Public Prosecutor,
for the U.T., Chandigarh.

VINOD S. BHARDWAJ , J.(Oral)

CRM-3556-2022

Prayer in the instant application filed under Section 482 of the Code of Criminal Procedure(hereinafter referred to as “Cr.P.C.”) is for release of Car bearing Registration No.PB-02-CJ-5303 to its registered owner-appellant No.1-Pawan @ Pawan Kumar, which was seized by the Department being the case property on 14.02.2017.

Learned counsel for the appellants has placed reliance upon a Division Bench judgment of this Court passed in Criminal Revision No.1765 of 2015, titled as Gurbinder Singh @ Shinder Versus State of

Punjab, decided on 19.09.2016, reported as 2016(4) R.C.R.(Criminal) 492, to submit that the vehicle in question had not been seized or ordered to be confiscated and as such, the same can be released in favour of appellant No.1. It is further submitted that there is no possibility of the vehicle being used for transporting the narcotic drugs and psychotropic substances as the vehicle in question itself is not worthy of much use anymore. Furthermore, it is submitted that no order in terms of Section 60(3) of the NDPS Act has been passed for confiscation of the vehicle in question. It is also alleged that the said vehicle was not purchased on account of any proceeds of illicit drugs or substances. He further submits that the vehicle in question has been lying unattended in the police station for the last five years and its value and utility have materially diminished.

Mr. Amit Kumar Goyal, Addl P.P. appearing on behalf of the U.T., Chandigarh does not have any objection to the prayer being allowed.

In view of the above, the present application is allowed and the vehicle bearing Registration No.PB-02-CJ-5303 is directed to be released in favour of its registered owner i.e. appellant No.1-Pawan @ Pawan Kumar, as per law.

CRA-S-1159-2021(O&M)

The instant appeal has been preferred against the judgment dated 06.10.2021 passed by Judge, Special Court, Chandigarh in case FIR No.47 dated 14.02.2017 under Sections 21 & 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985(hereinafter referred as the “NDPS Act”) and Section 25 of the Arms Act and Sections 467 and 473 of the Indian Penal Code, registered at Police Station Sector-39, Chandigarh in NDPS Case No.48 dated 08.05.2017.

Briefly, the case of the prosecution is that on 14.02.2017, the Investigating Officer SI Jaspal Singh was on patrolling duty along with his police-party in the official vehicle bearing No.CH01-GA-6354 in connection with Valentine's day rush and other incidents. At about 08.15 pm, they noticed a white coloured Swift Car bearing registration No.HR-51-AC-3585 coming from the side of Phase-6 light point towards the crossing of Sectors 39/40, 55/56 being driven by a non-Sikh person and another non-Sikh boy was sitting with him on the passenger seat. The said car was signalled to stop at which both the occupants tried to flee away. The Investigating Officer apprehended the said persons. The driver of the car disclosed his name as Pawan while the co-passenger/traveller disclosed his name as Raman. The Investigating Officer apprised the accused(appellants herein) about apprehension of the accused in possession of some stolen or robbed articles by them and then conducted search of those persons. One black coloured loaded pistol on which A3714 1943 was engraved, was recovered from the pant worn by accused Pawan. The magazine was found to contain four live cartridges. The said accused failed to produce any licence to possess the said vehicle. Furthermore, another loaded pistol was recovered on search of Raman. He also could not produce any permit or licence to possess the weapon in question. Independent witnesses were tried to join the proceedings, however, the same were not willing. Then the said car was further searched whereupon a saffron coloured envelope was recovered from near the gear rod in the vehicle and was also found to contain pale brown coloured substance which was in semi wet state. It was opined to be heroin. The appellants-accused failed to produce any permit or licence for holding the same. On weighing, the same came out to be 171 grams. Currency

worth ₹4,50,000/- was also recovered in the said case. Accordingly, the present FIR was registered against the appellants and the alleged case property was taken into possession vide separate recovery memo.

In order to substantiate its case, prosecution examined PW1 recovery witness ASI (the then HC) Gurmeet Singh; PW2 first IO SI Jaspal Singh; PW3 C.Amandeep; PW4 second Investigating Officer SI Naveen Kumar; PW5 MMHC Harbans Singh; PW6 Kuldeep Singh Bhattal; PW7 Pardeep Kumar, Clerk from Election Department, Ludhiana; PW8 Swinder Kaur, Junior Assistant from RTA, Amritsar; PW9 the then SHO Inspector Rajdeep Singh; PW10 Neelam, Clerk from RTA, Ludhiana; PW11 C.Vikas Kumar; PW12 Rajat Nakra, Deputy Manager from Maruti Suzuki India Ltd.; PW13 Bhupesh, Registration Clerk from SDM Office, Sector 12, Faridabad; PW14 Naveen Neer, Branch Incharge from Arms Branch, Office of DC, Chandigarh, tendered CFSL report Ex.P21 and closed its evidence.

Upon conclusion of the prosecution evidence, the incriminating evidence was put to the appellants in the statement under Section 313 Cr.P.C. to which they pleaded not guilty and claimed to have been falsely implicated.

The accused thereafter examined DW1 Soravdeep Singh, Nodal Officer from Bharti Airtel; DW2 Mandeep Singh, Nodal Officer from Reliance-Jio, DW3 Surjit Singh, Nodal Officer from Vodafone Idea; DW4 Jagjit Singh, Clerk from Arms Branch, Deputy Commissioner Officer, AmritsarPunjab; DW5 Baljinder Kaur (wife of accused Pawan Kumar) and closed their defence evidence.

Upon consideration of the rival submissions advanced by the parties, the Judge, Special Court acquitted the appellants of the charge under

Section 29 of the NDPS Act. However, they were held guilty for the commission of offence under Section 21(b) of the NDPS Act, 25(1)(B)(a) of the Arms Act and under Section 473 IPC. Accused Pawan Kumar was also held guilty for the commission of offence under Section 467 IPC. Accused Raman Kumar was acquitted of the charge under Section 467 IPC. The appellants were thereafter sentenced vide order dated 06.10.2021 by the Judge, Special Court, Chandigarh as under:-

Convict-Pawan

Offence under Section	Sentence imposed
21(b) NDPS Act	Four (4) years rigorous imprisonment and to pay a fine of Rs.40,000/-. In default of payment of fine, he shall undergo rigorous imprisonment for six months.
21(1B)(a) Arms Act	Three (3) years rigorous imprisonment and to pay a fine of Rs.5,000/-. In default of payment of fine, he shall undergo rigorous imprisonment for three months.
467 IPC	Three (3) years rigorous imprisonment and to pay a fine of Rs.5,000/-. In default of payment of fine, he shall undergo rigorous imprisonment for three months.
473 IPC	Three (3) years rigorous imprisonment and to pay a fine of Rs.5,000/-. In default of payment of fine, he shall undergo rigorous imprisonment for three months.

Convict-Raman

Offence under Section	Sentence imposed
21(b) NDPS Act	Four (4) years rigorous imprisonment and to pay a fine of Rs.40,000/-. In default of payment of fine, he shall undergo rigorous imprisonment for

six months.

21(1B)(a) Arms Act

Three (3) years rigorous imprisonment and to pay a fine of Rs.5,000/-. In default of payment of fine, he shall undergo rigorous imprisonment for three months.

473 IPC

Three (3) years rigorous imprisonment and to pay a fine of Rs.5,000/-. In default of payment of fine, he shall undergo rigorous imprisonment for three months.

Aggrieved of the same, the present appeal has been filed by both the appellants-accused.

Learned counsel appearing on behalf of the appellants at the very outset does not wish to press the present appeal on merits and would restrict his argument only to the extent of reduction of sentence so imposed upon the appellants by the Court below.

The aforesaid request made by learned counsel for the appellants is accepted and accordingly, the lower Court record was summoned and the main appeal was also directed to be taken-up for hearing.

Today on resumed hearing, learned counsel for the appellants has submitted that the appellants were sentenced by the Judge, Special Court, Chandigarh to undergo rigorous imprisonment for a period of four years for the commission of offence under Section 21(b) of the NDPS Act and various other sentences in the other offences. However, all the sentences were ordered to run concurrently. Hence, the appellants were required to undergo substantive sentence of four years. He has made a reference to the custody certificates furnished by the learned State Counsel to contend that insofar as the appellant No.1-Pawan is concerned, he has undergone actual sentence of 03 years, 05 months, 17 days, whereas appellant No.2-Raman

has undergone actual sentence of 03 years, 04 months, 12 days. He further submits that the convicts are brothers and were aged 31 and 33 years as on the date of offence and that they are at the prime of their youth and did not contend to indulge in the trade. He further submits that the appellants have not only undergone a major part of the actual sentence so imposed upon them but have also undergone the agony of criminal trial for a period of more than five years.

Learned counsel for the appellants places 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 ₹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 ₹1,00,000/-, the sentence was

reduced to the period already undergone (03 years 18 months).

Per contra, Learned Additional P.P. appearing on behalf of U.T., Chandigarh while not disputing the ratio so laid down by the Courts in the precedent judgments submits that the appellants were in possession of 171 grams of heroin and that they could not offer any valid explanation as to why they were carrying the same and were also carrying the weapons for which they could not show any valid licence. He thus submits that the appellants are involved in the drug trade and that any indulgence ought not to be shown to them. He further makes a reference to the custody certificates to point out that the appellants are involved in other cases under the NDPS Act as well and as such they are habitual of indulging in such offences and that in the event of any concession being shown to them, there is every likelihood of the appellants indulging in the same trade.

I have considered the rival submissions advanced by the learned counsel for the parties and have gone through the precedent judgments referred to above as also the mitigating circumstances pointed out by the learned counsel appearing on behalf of the appellants.

The ratio of the precedent judgments noticed above has not been disputed by Mr. Amit Kumar Goyal, Additional P.P. appearing on behalf of the U.T., Chandigarh.

The sentence awarded to the appellants is the maximum as provided for the offences in question. It is also noticed that the appellants have already undergone substantive part of the sentence so imposed upon them. It is also noticed that the appellants are on bail in the other matters and have not yet been convicted. Besides, this is the first conviction of the appellants.

It is a well-settled position in law that the object of sentencing is prohibitory, reprimanding as well as reformatory. The philosophy of penology aiming to reform an accused has to be given a higher pedestal and the Court of law must consider the belief to seek good and the possibility of future reform. The opportunity of showing reformative behaviour ought not to be denied to a person on his first conviction. Besides, the appellants are sincere, married and have young children and with the concept of the social obligation and responsibilities falling on them, the possibility of their reflecting a reformatory behaviour and tendencies is much larger.

The said issue was also examined by the Hon'ble Supreme Court in the matter of ***Soman Vs. State of Kerala, (2013) 11 SCC 382***, the relevant extract of the said judgment is reproduced hereinbelow:-

'15. Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. In State of Punjab v. Prem Sagar (2008) 7 SCC 550, this Court acknowledged as much and observed as under –

“2. In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender, have not issued any guidelines. Other developed countries have done so. At some quarters, serious concerns have been expressed in this behalf. Some committees as for example Madhava Menon Committee and Malimath Committee have advocated introduction of sentencing guidelines.”

16. Nonetheless, if one goes through the decisions of this Court carefully, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation etc. (See: Ramashraya Chakravarti v. State of Madhya Pradesh (1976) 1 SCC 281, Dhananjay Chatterjee alias Dhana v. State of W.B. (1994) 2 SCC 220, State of Madhya Pradesh v. Ghanshyam Singh (2003) 8 SCC 13, State of Karnataka v.

Puttaraja (2004) 1 SCC 475, Union of India v. Kuldeep Singh (2004) 2 SCC 590, Shailesh Jasvantbhai and another v. State of Gujarat and others (2006) 2 SCC 359, Siddarama and others v. State of Karnataka (2006) 10 SCC 673, State of Madhya Pradesh v. Babulal (2008) 1 SCC 234, Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498.

14. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness. The question is whether the consequences of the offence can be taken as the measure for determining its harmfulness? In addition, quite apart from the seriousness of the offence, can the consequences of an offence be a legitimate aggravating (as opposed to mitigating) factor while awarding a sentence. Thus, to understand the relevance of consequences of criminal conduct from a Sentencing standpoint, one must examine: (1) whether such consequences enhanced the harmfulness of the offence; and (2) whether they are an aggravating factor that need to be taken into account by the courts while deciding on the sentence.

26. Punishment should acknowledge the sanctity of human life. We fully agree.

27. From the above, one may conclude that:

27.1. Courts ought to base sentencing decisions on various different rationales – most prominent amongst which would be proportionality and deterrence.

27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.

27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor.”

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 reformative 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 aforementioned citations.

In view thereof, the present appeal is partly allowed, The judgment of conviction passed by the Judge Special Court, Chandigarh, is upheld and the sentence awarded to the appellants is reduced to the period already undergone by them.

The sentence of fine is, however, increased from ₹55,000/- to ₹75,000/- each. The fine shall be deposited within a period of one month, failing which, the appellants shall have to undergo rigorous imprisonment for a period of six months.

With the aforesaid modification, the present appeal is partly allowed.

May 11, 2022
seema

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No