

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

CRA-S-1855-SB-2004

Date of Decision: January 24, 2023

Sanjiv Kumar

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. S.S. Dinarpur, Advocate, with
Mr. Arvind Singh, Advocate, and
Mr. Sumit Gujjar, Advocate,
for the appellant.

Mr. Vikas Bhardwaj, AAG, Haryana,
for the respondent – State.

SANJAY VASHISTH, J.

1. Appellant – Sanjiv Kumar, then aged 28 years, has filed the present appeal challenging judgment of conviction dated 15.09.2004, and order of sentence dated 17.09.2004, passed by learned Special Judge, Ambala, in NDPS Case No. 54 of 30.05.2002/25.10.2002, arising from FIR No. 10 of 28.01.2002, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, '1985 Act'), registered at Police Station Parao, District Ambala.

2. On 28.01.2002, without there being any valid licence/permit, appellant was found in possession of seven plastic packets of poppy straw of 2 Kgs. each. Thus, 14 Kgs. of poppy straw was recovered by the police from the appellant.

3. Vide order of sentence dated 17.09.2004, appellant was

sentenced as under:-

Under Section	Sentence	Fine	In Default
15 of the 1985 Act	3 years RI	Rs. 2,000/-	1 month RI

4. Appeal was admitted on 25.09.2004, and recovery of fine was stayed. Thereafter, vide order dated 29.03.2005, after noticing factum of total undergone period inside jail as eight months, remaining sentence of the appellant was suspended by this Court.

5. At the final hearing of the appeal today, learned counsel for the appellant submits that he has got instructions from his client, not to challenge the judgment of conviction dated 15.09.2004, passed by learned Special Judge, Ambala. However, on the question of quantum of sentence, learned counsel for the appellant submits that appellant being first offender & sole bread earner for his family; there being no other case ever registered against him, except the present one; quantity of narcotic substance, which is subject matter of present appeal, is much less to the commercial quantity; already more than eight months of sentence has been undergone by the appellant in jail; and that appellant is facing agony of criminal prosecution for the last more than 21 years, therefore, taking a lenient view, remaining substantive sentence of imprisonment of the appellant may be reduced to the period already undergone by him in jail.

6. On the other hand, Mr. Vikas Bhardwaj, learned Assistant Advocate General, Haryana, while opposing the submissions addressed by learned counsel for the appellant, submits that prayer of the appellant should not be accepted because he was involved in a serious case, offence

of which is a crime against society.

7. I have heard learned counsel for the parties and with their able assistance gone through the record.

8. As per custody certificate dated 05.01.2023, which was taken on record on 06.01.2023, upto 01.04.2005, before suspension of sentence in the present appeal, the appellant had undergone total eight months and twenty-four days incarceration, out of total substantive sentence of three years, which was ordered by learned Trial Court.

9. This Court has examined the submissions addressed by learned counsel from both the sides and also perused the custody certificate dated 05.01.2023, and has noticed that except the present case, appellant is not involved in any other criminal case.

10. Another noticeable aspect is that after releasing of the appellant on bail, vide order dated 29.03.2005, by this court, he was never found indulged in any similar activity, which shows that with the passage of time, appellant has adopted the principles of reformatory theory, which otherwise also sends a direct message to reform oneself despite facing conviction in a criminal case. As per the provisions of the 1985 Act, in the non-commercial quantity, there is no minimum sentence prescribed. Therefore, taking into consideration totality of circumstances, this Court is of the view that ends of justice would be best met, if the substantive sentence of imprisonment of the appellant is reduced to that already undergone by him.

11. Resultantly, conviction of the appellant under Section 15 of

the 1985 Act is maintained and his substantive sentence of imprisonment is reduced to that already undergone by him. However, remaining part of sentence, i.e. payment of fine of Rs. 2,000/- shall remain intact.

12. With the above modification in the order of sentence dated 17.09.2004, passed by learned Special Judge, Ambala, present appeal stands disposed of.

13. Registry is directed to send back original lower court record alongwith a copy of this judgment.

(SANJAY VASHISTH)
JUDGE

January 24, 2023

Pkapoor

Whether Speaking/Reasoned: **YES/NO**
Whether Reportable: **YES/NO**