

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

**CRA-S-565-SB-2004
Date of Decision: February 15, 2023**

Gulshan Kumar

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

**Present: Mr. Rajeev Kawatra, Advocate,
for the appellant.**

**Mr. J.S. Arora, DAG, Punjab,
for the respondent – State.**

SANJAY VASHISTH, J.

1. Appellant – Gulshan Kumar, then aged about 37/38 years, has filed the present appeal challenging judgment of conviction dated 07.02.2004, and order of sentence dated 09.02.2004, passed by learned Special Judge, Ferozepur, in Sessions Case No. 101, dated 19.09.2000/R.B.T. No. 117, dated 06.03.2002, arising from FIR No. 168, dated 06.07.2000, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'), registered at Police Station Sadar, Fazilka.

2. On 06.07.2000, a police party headed by ASI Kuldip Singh, while on patrol duty in the area of village Sainian, apprehended appellant – Gulshan Kumar, with suspicion that he was carrying some contraband in the small gunny bag, which he was carrying in his right hand. After obtaining consent from the appellant on consent memo. (Ex. P-1),

Investigating Officer carried out search of the small gunny bag and recovered 5 Kgs. of poppy husk. A *ruqa* (Ex. P-5) was sent to the police station, on the basis of which formal FIR (Ex. P-6) was registered. After completing formalities and investigation etc., appellant – Gulshan Kumar was put to trial. He was charged for the offence punishable under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

Learned Trial Court held the appellant guilty of the offence, vide judgment of conviction dated 07.02.2004 and vide order of sentence dated 09.02.2004, he was sentenced as under:-

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

3. Appeal was admitted on 11.03.2004, and after noticing the factum of total undergone period inside jail against the substantive sentence of 2 years and fine of Rs.1,000/-, remaining sentence of the appellant was suspended during pendency of the appeal, by this Court.

4. 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 07.02.2004, passed by learned Special Judge, Ferozepur. 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; at present appellant is aged about 60 years; there being no other case ever registered against him, except the present one; already seven months and nineteen

days actual sentence has been undergone by the appellant in jail; and that appellant is facing agony of criminal prosecution for the last 22 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.

5. On the other hand, Mr. J.S. Arora, learned Deputy Advocate General, Punjab, 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. Learned State counsel also furnished custody certificate dated 14.02.2023, today in the Court, which is taken on record. As per custody certificate dated 14.02.2023, appellant has undergone seven months and nineteen days actual sentence, out of total substantive sentence of two years, which was ordered by learned Trial Court.

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

7. This Court has examined the submissions addressed by learned counsel from both the sides and also perused the custody certificate dated 14.02.2023, and has noticed that except the present case, appellant is not involved in any other criminal case.

8. Another noticeable aspect is that after releasing of the appellant on bail, vide order dated 11.03.2004, 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.

9. On the issue of reformatory theory in context to any wrong doer, His Lordship V.R. Krishna Iyer, J., of Hon'ble Apex Court, in case titled as Mohammad Giasuddin v. State of Andhra Pradesh, (1977) 3 SCC 287, has observed as under:-

“5. If every saint has a past, every sinner has a future, and it is the role of law to remind both of this. The Indian legal genius of old has made a healthy contribution to the word treasury of criminology. The drawback of our criminal process is that often they are built on the bricks of impressionist opinions and dated values. Ignoring empirical studies and deeper researches.” (emphasis added)

10. In case titled as Satish @ Sabbe v. State of Uttar Pradesh (Special Leave Petition (Crl.) No. 7369 of 2019, decided on 30.09.2020 : Law Finder Doc ID # 1746022), His Lordship Surya Kant, J., says as:

“Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free-roaming criminals creating havoc in the lives of ordinary peace-loving citizens. But equally strong is the foundation of reformatory theory which propounds that a civilised society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first-time offenders ought to be liberally accorded a chance to repent their past and look-forward to a bright future.” (emphasis added)

11. This Court also can not ignore the observation made by their Lordships' of Hon'ble Apex Court in the case of Commissioner of Police and others v. Sandeep Kumar, (2011) 4 SCC 644:-

“9. The modern approach should be to reform a person instead of branding him as a criminal all his life”.

12. In the case of Haribhau v. State of Maharashtra, (2018) 18 SCC 43, Hon'ble Apex Court made observation in the case of an appeal which was preferred against an order of reduction of sentence 'as already undergone'. Para 13 of the said judgment says as under:-

“13. In our considered opinion, firstly, taking into account that the appellant has already undergone one month's jail sentence out of three months awarded to him, secondly, the fact that the incident in question is quite old and seems to have occurred at the spur of the moment, thirdly, the appellant has no criminal antecedent in his past life and lastly, he is not required in any other criminal case except the one in question which the appellant fairly did not deny having committed and rightly did not challenge his conviction, it is considered to be just and proper to alter the jail sentence awarded to the appellant from three months to the extent of period of one month which was already undergone by him and instead enhance the total fine amount awarded under different sections from Rs. 800 to Rs. 15,000/-”

13. Now applying the principles noticed at different stages by the Hon'ble Apex Court, I find that recovery of 5 Kgs. of poppy husk in present case, was effected on 06.07.2000, i.e. more than 22 years back; at the time of recovery, appellant was of the age of about 37/38 years; prior to that he was never found involved in any other case, especially of similar nature; even after involvement of appellant in the present case, there is no other case registered against him; had he been addicted himself or in the business of narcotic drugs, chance of involvement after registration of the case in hand could be on higher side; never any involvement shows that appellant has reformed himself and rehabilitated in the society; and that not sending the appellant again behind the bars, because of not repeating such offence again, may set an example for

others also to get inspired of not involving themselves again in the field of narcotic drugs.

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.

14. Resultantly, conviction of the appellant under Section 15 of the NDPS 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. 1,000/- shall remain intact.

15. With the above modification(s) in the order of sentence dated 09.02.2004, passed by learned Special Judge, Ferozepur, present **appeal stands disposed of.**

16. Registry is directed to send back original lower court record alongwith a copy of this judgment to learned Trial Court, for taking further steps with regard to the recovery of fine, in accordance with law.

(SANJAY VASHISTH)
JUDGE

February 15, 2023

Pkapoor

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