

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

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**CRA-S-660-SB-2005
Decided on : 03.03.2023**

Lakhwinder Kumar

. . . Appellant(s)

Versus

State of Punjab

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Lovish Rattan, Advocate for
Mr. Vishal Aggarwal, Advocate
for the appellant.

Mr. J.S. Arora, DAG, Punjab.

SANJAY VASHISTH, J.

1. Appellant – Lakhwinder Kumar, aged 25 years (at the time of conviction), has filed the present appeal challenging judgment of conviction and order of sentence dated 23.02.2005, passed by Judge Special Court, Patiala, in Sessions Case No.91-T of 27.9.2004/9.8.2003, arising from FIR No. 33, dated 12.04.2003, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'NDPS Act'), registered at Police Station Julkan.

2. On 12.04.2003, ASI Ranbir Singh along with ASI Varinder Singh and other police officials of Police Station Julkan, on a patrol duty were proceeding in a Gypsy bearing No.PB-08F-2271, driven by H.C. Balbir Singh. When they reached Devigarh-Binjal road on the bridge of Tangri river in the revenue limits of village Ojha, at about 4.30 P.M., P-W Lakhwinder Singh alias Happy came in zen car and after stopping the car, he was holding talk with ASI Ranbir Singh, when they saw accused coming

from the side of village Ratta Khera on the bank of Tangri river and was holding white colour polythene bag in his right hand. On suspicion, he was apprehended by the police party and notice under Section 18(c) of the NDPS Act was served upon him, and the accused reposed confidence in ASI Ranbir Singh and after preparing consent memo, search was conducted, on which polythene bag was found to be containing opium. Thereafter, sample as well as the residue were converted into sealed parcels and taken into possession vide recovery memo Ex.PF. Accused was arrested after serving him with arrest memo Ex.PD and information memo Ex.PE, was also prepared. After completing the investigation and receipt of FSL Report (Ex. PH), seized contraband was declared that of opium. Accordingly, appellant – Lakhwinder Kumar, was put to trial. He was charged for the offence punishable under Section 18(c) of the NDPS Act, vide order dated 13.04.2003. Eventually, learned Trial Court held the appellant guilty of the offence, vide judgment of conviction dated 23.02.2005 and vide separate order of sentence of even date i.e. order dated 23.02.2005, he was sentenced as under:-

Under Section	Sentence	Fine	In Default
18(c) of the NDPS Act	2 years RI	Rs.5,000/-	9 months RI

3. Appeal was admitted on 07.04.2005. Thereafter, vide order dated 07.04.2005, after noticing the factum of total undergone period inside jail, remaining sentence of the appellant was suspended by this Court.

4. At the final hearing of the appeal today, learned counsel for the appellant submits that appellant has reformed himself by rehabilitating in the society, as he never got involved in any other case of similar nature despite being on bail since the time of conviction by learned trial Court. Thus, submits that sending the appellant behind the bars after more than 19 years of

period may spoil his and his family members complete future carrier and thus, a sympathetic view can be taken qua the sentence part, without there-being any challenge by the appellant qua the conviction.

5. Learned State counsel furnished custody certificate dated 03.03.2023, today in the Court, which is taken on record. As per said custody certificate, appellant had remained inside jail for about 1 month period, however, except present case there is nothing mentioned about the registration of any other case. Thus, learned State counsel agrees on the issue that except present case, in which appellant is convicted, there is no such instance of recovery from the appellant of any contra-band covered under the Narcotic Drugs and Psychotropic Substances Act.

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 03.03.2023, and has noticed that except the present case, appellant is not involved in any other criminal case.

8. Another noticeable aspect is that after release of the appellant on bail, vide order dated 07.04.2005, by this Court, he was never found indulged in any other 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 CRA-S-1962-SB-2004 5 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 Courts', I find that recovery of 1 Kg of opium in present case, was effected on 13.04.2003, i.e. more than 19 years back; at the time of recovery, appellant was of the age of about 25 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, chances of his involvement after registration of the case in hand could be on higher side; non-involvement in any other case is enough to assess 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 18(c) of the NDPS Act is maintained and his substantive sentence of imprisonment is reduced to that already undergone by him. However, as far as, remaining part of sentence, i.e. payment of fine of Rs. 5000/- is concerned, same is enhanced from Rs.5000/- to Rs.20,000/-.

15. With the above modification(s) in the order of sentence dated 23.02.2005, passed by learned Presiding Officer, Judge Special Court, Patiala, 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

March 03, 2023

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