

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

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CRA-S-1514-SB-2015 (O&M)
Date of decision: 31.05.2023

Nishabar Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. H.S. Randhawa, Advocate for the appellant

Mr. H.S. Sullar, Sr. DAG Punjab

AMAN CHAUDHARY. J.

1. Challenge has been led to judgment and order dated 14.01.2015, passed by learned Judge, Special Court, Amritsar, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.10,000/- and in default of payment of fine, to further undergo RI for three months, for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act').

2. Succinctly, the facts as per the FIR are that on 16.3.2012, while ASI Harbinder Singh and other police officials on patrolling duty were present in the area of Guru Nanak Nagar, they saw a person coming from the side of Mohalla Baba Deep Singh Nagar, carrying a plastic bag in his right hand. On seeing the police party, he got perplexed and tried to turn back towards the village but on suspicion of carrying some narcotic substance, he was apprehended by the said police officials. A passerby namely Mandeep Singh, was also joined in the recovery proceedings. The person, who was

apprehended disclosed his name Nishabar Singh. After apprising him of his right to be searched in presence of a Gazetted officer, the accused reposed confidence in the officers and after signing a consent memo, search was conducted by ASI Harbinder Singh. Recovery of opium wrapped in white colour polythene bag was effected. Thereafter, two samples of 10 grams each were separated and sealed alongwith the residue opium, weighing 1 Kg 980 grams. These parcels were taken into possession and a ruqa was sent to the police station, on the basis of which, FIR in question was registered against the accused-appellant.

3. After investigation, final report under Section 173 CrPC was submitted before the Court. The accused-appellant was chargesheeted by the special Court for the offence punishable under Section 18 of the NDPS Act, to which he pleaded not guilty and claimed trial.

4. To bring home guilt of the accused, the prosecution examined as many as 5 witnesses. On closure of prosecution evidence, statement of the accused-petitioner was recorded under Section 313 Cr.P.C. All the incriminating evidence was put to him, which was denied and please innocence and false implication. In defence, Mandeep Singh was examined as DW1.

5. On scrutinizing the evidence led by the parties and hearing the counsel, the trial Court finding the prosecution proved beyond reasonable doubt, convicted and sentenced the accused-petitioner as noticed above.

6. Hence, the present appeal.

7. Learned counsel for the appellant does not wish to challenge the

judgment of conviction passed by the trial Court, however, he prays for taking a lenient view by reducing his sentence to a period of seven months and nine days already undergone, as he is about 55 years of age, a poor person, sole breadwinner of his family, first offender and has not misused the concession of bail. In support of his submissions, he relies on **S.K. Sakkar @ Mannan vs. State of West Bengal**, (2021) 4 SCC 483, **Issak Nabab Shah v. State of Maharashtra**, (2020) SCC OnLine SC 1174, **State of Haryana vs. Joginder Ram**, (2015) 6 R.C.R. (Criminal) 97 and the judgments passed by this Court in the cases of **Mangal Singh vs. State of Haryana** in CRA-S-4848-SB-2014 decided on 29.11.2022 and **Naresh Kumar vs. State of Haryana** in CRA-S-796-SB-2005, decided on 24.02.2023.

8. Learned State counsel opposes the appeal on the ground that the trial Court after evaluating the evidence, has rightly convicted the appellant and sentence awarded to him cannot be said to be excessive, therefore, he prays for the dismissal of the present appeal.

9. Heard the learned counsel for the parties and perused the record with their able assistance.

10. Even though the challenge to conviction has been given up, this Court, after perusal of the evidence on record and the judgment passed by the trial Court, finds the appeal to be bereft of merits. PW1 ASI Harbinder Singh in his deposition categorically stated that accused Nishabar Singh was apprehended by him with the help of other police officials. After due procedure, recovery of alleged contraband was effected from him. The samples were collected and sealed. The said version was corroborated by

PW5 Inspector Davinder Kumar, before whom the accused alongwith the recovery parcels were produced. In the report Ex.PJ, there was nothing stated that the seals on the sample were not intact at the time of its receipt and there was no evidence led that they were in any way tampered with. PW4 HC Faquir Singh, MHC and PW2 HC Jitender Singh, who had in their respective affidavits deposed that the samples were not tampered in any manner, were not cross-examined on this aspect. It is evident that the credibility of witnesses remained unshaken barring a few minor discrepancies, which did not create a dent in the prosecution version. Accordingly, the trial Court after having scrutinized the evidence on record has rightly convicted the accused-appellant. As such, the conviction of the appellant is affirmed.

11. Apropos the submission made by the learned counsel for the appellant, notably, the contraband recovered from him was of non-commercial quantity and the mitigating circumstances of the appellant as brought forth are that he has suffered the pangs of a protracted trial that stretched for close to 11 years, is a poor person aged about 55 years and sole breadwinner of his family. There has been no incident brought to the notice of this Court of his having misused the bail granted at the trial or appellate stage. Hon'ble The Supreme Court of India considering the mitigating circumstances that included the petitioner having faced prolonged trial, not being involved in any other case and having not misused the concession of bail in the cases of **SK. Sakkar @ Mannan** (supra) **Issak Nabab Shah, Joginder Ram**, wherein the appellants were convicted under NDPS Act, but considering the mitigating circumstances, their sentence was reduced to the period already undergone,

likewise, in **M. Sampat vs. State of Chhattisgarh**, (2021) 6 SCC 201, wherein the appellant, who was a first time offender, 22/23 years old at the time of incident and was an indigent helper (described as Conductor) of the truck from where narcotics were recovered, the sentence was reduced to the period already undergone. This Court in the cases of **Mangal Singh** and **Naresh Kumar** (supra) had also reduced the sentence to the period already undergone keeping in view the age of the appellant, neither misused the concession of bail nor involved in any other criminal case, the alleged recovery being of non-commercial quantity, appellants having faced the protracted trial.

12. In view of the peculiarity of the facts and circumstances of the case and deriving strength from the afore-referred judgments, this Court is of the view that ends of justice would be adequately met if the sentence of the appellant is reduced to the extent of the period he has already undergone.

13. As a sequel thereto, the order of sentence dated 14.01.2015 passed by trial Court is modified and the sentence is ordered to be reduced to the period already undergone by him. However, the fine shall remain intact.

14. The present appeal is partly allowed.

(AMAN CHAUDHARY)
JUDGE

May 31, 2023
M.Kamra

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No