

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

CRA-S-3352-SB-2013

Date of Decision: 27.04.2023

Balwinder Singh @ Bhinder

...Appellant...

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr. Charanjit Sharma, Advocate
for the appellant.

Mr. Amit Shukla, AAG, Punjab.

HARKESH MANUJA, J.

1. By way of present appeal, challenge has been made to the judgment dated 06.09.2013 passed by the court of learned Special Judge, Fazilka, whereby, appellant was convicted under Section 18 of the NDPS Act, 1985 and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.10,000/- or in default to further undergo rigorous imprisonment for a period of three months.

2. Facts of the case are that the appellant was arrayed as accused in FIR No.74 dated 18.07.2011, under Section 18 of the NDPS Act, 1985 registered at Police Station Arniwala, for having in possession of 1 kg of opium. On the basis of the evidence recorded, learned trial court convicted and sentenced the appellant as mentioned in para 1 of this judgment, vide judgment dated 06.09.2013.

3. At the very outset, learned counsel for the appellant submits

that he restricts his prayer only to the reduction of sentence awarded and does not challenge the judgment of conviction. It is contended that out of a period of one year of his sentence, he has already undergone actual sentence of 04 months and 7 days, out of 01 year. He further submits that there is no other case registered against the appellant and the contraband recovered from the appellant is of non-commercial quantity.

4. On the other hand, learned State counsel opposes the prayer made on behalf of the appellant for reduction in the sentence.

5. I have heard learned counsel for the parties and perused the paper book, I find substance in the submission made on behalf of the appellant regarding reduction of sentence.

6. On perusal of judgment passed by the court below, I am of the considered view that the trial court has rightly appreciated the evidence on the record while holding the appellant guilty of the charge framed against him. There is no infirmity or illegality in the findings given by the Court below. Therefore, the conviction of the appellant is, thus, affirmed.

7. Even the counsel for the appellant has not assailed the judgment of conviction and has pleaded for reduction of quantum of sentence, to the period already undergone while referring to the judgments passed by this Court in ***CRA-S-660-SB-2005***, titled as ***“Lakhwinder Kumar vs. State of Punjab”*** decided on 03.03.2023, ***“Mohinder Singh vs. State of Punjab”***, 2018(2) *Law Herald* 1678 and ***“Rajinder Singh vs. State of Punjab”***, 2019(4) *RCR (Criminal)* 711. Paras No.9 to 11 of ***Lakhwinder Kumar's*** case (supra) are relevant, which are reproduced hereunder:-

“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)**, 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 criminal 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 vs. 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.”

8. Considering the facts of the present case, wherein the appellant has already undergone actual sentence for a period of almost 04 months, besides he being a young man, not involved in any other case since the date of registration of present FIR for the past almost 12 years and the recovery involved being non-commercial quantity of opium as well as keeping in mind the law laid down in the aforementioned judgments, the sentence awarded to the appellant is ordered to be reduced to the period already

undergone by him, however, the sentence of fine is enhanced from Rs.10,000/- to Rs.20,000/-. Except with the modification in quantum of sentence and fine, as indicated herein above, the appeal is dismissed.

27.04.2023
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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No