

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

CRA-S-2865-SB-2016

DATE OF DECISION :15:05:2023

Dinesh @ Pala

...Appellant

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARKESH MANUJA

Present:- Mr.Amandeep Rana , Advocate for the appellant.
Mr. Gaurav Bansal, DAG, Haryana.

HARKESH MANUJA, J.

1. By way of present appeal, challenge has been made to the judgment of conviction dated 06.08.2016 and order of sentence dated 08.08.2016 passed by the court of learned Judge Special Court, Sonapat, whereby, appellant was convicted under Section 15(b) of the NDPS Act, 1985 and sentenced to undergo rigorous imprisonment for a period of four year and to pay fine of Rs.30,000/- or in default to further undergo rigorous imprisonment for a period of three month.

2. Facts of the case are that the appellant was arrayed as accused in FIR No.245 dated 01.09.2013, under Section 15(b) of the NDPS Act, 1985 registered at Police Station Murthal, Sonapat, for having possessed 6 Kg Poppy Straw. On the basis of the evidence recorded, learned trial Court convicted and sentenced the appellant as mentioned in para 1 above vide impugned judgment/order.

3. At the very outset, learned counsel for the appellant submits that he restricts his prayer only qua reduction of sentence awarded and does not challenge the judgment of conviction on merits. It has been

contended that out of four years of his sentence, the appellant has already undergone actual sentence of 05 months and 5 days. He further submits that there is no other case registered against the appellant and the contraband recovered from the appellant is of intermediate quantity.

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

5. I have heard learned counsel for the parties and perused the paper book. On perusal of judgment passed by the Court below, I am of the considered view that the trial Court rightly appreciated the evidence on record while holding the appellant guilty of the charges framed against him. There is no infirmity or illegality in the findings given by the Court below. Therefore, the conviction of the appellant is, hereby affirmed.

6. As regards the plea raised regarding reduction of quantum of sentence, to the period already undergone, learned counsel for the appellant has relied upon 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) being relevant 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 out criminal process is that often they are built on the bricks of impressionist opinions and dated values. Ignoring empirical studies and deeper researches.”

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 freeroaming 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.”

11. This Court also cannot 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.”

7. Considering the facts and circumstances of the present case, wherein the appellant has already undergone actual sentence for a period of 05 months and 5 days, besides he being 48 years of age, first offender and sole bread earner of the family, living a peaceful life for the last almost ten years, having joined the main stream of society being not even involved

in any other case since the date of registration of present FIR as informed by learned State counsel, has not even misused the concession of suspension of sentence and the recovery involved being of intermediate quantity of poppy straw besides 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 of Rs 30000/-, is upheld.

8. Accordingly, except with the aforesaid modification in the quantum of sentence, as indicated herein above, the appeal is dismissed.

9. Pending application(s), if any, shall also stand disposed of.

15.05.2023
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned
Whether reportable?

yes/no
yes/no