

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

CRA-S-2943-SB-2014 (O&M)

Date of Decision: 11.08.2023

Dharampal Pasvan

... Appellant

Versus

State of Punjab

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr.Amaninder Preet, Legal Aid Counsel
for the appellant.

Mr. Iqbal Singh Maan, DAG, Punjab.

HARPREET SINGH BRAR, J.

1. The present appeal is directed against the judgment of conviction and order of sentence dated 27.03.2014 passed by learned Special Court (Fast Track Court), Patiala in case bearing FIR No.49 dated 27.06.2012, under Section 20 of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act'), registered at Police Station GRPS, Patiala, whereby the appellant/accused has been convicted for the commission of offence punishable under Section 20 of the NDPS Act and has been sentenced to undergo rigorous imprisonment for a period of 10 years with a fine of Rs.1 lakh and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months.

FACTUAL BACKGROUND

2. Brief facts of the prosecution case are that on 27.06.2012, ASI Gurjinder Singh (Investigating Officer) along with other police officials were present at Platform No.1, Railway Station Rajpura, where they noticed one person sitting on

a bench carrying a bag in his hand. On seeing the police party, he tried to slip away but he was apprehended on suspicion. The Investigating Officer informed him of his option to get his bag searched in the presence of either a Gazetted Officer or a Magistrate. The appellant/accused reposed confidence in the Investigating Officer. A consent memo (Ex.PA) was prepared which was attested by ASI Satwinder Singh, HC Rakesh Kumar and HC Angrej Singh and signed by the accused/appellant. The bag was searched from which *charas* wrapped in a polythene paper was recovered. Two samples weighing 10 grams each were separated and the remaining contraband in the bag was weighed and the same came out to be 980 grams. The sample parcels and the bulk parcel were sealed with seal bearing impression 'GS'. Case property was taken into possession vide recovery memo (Ex.PB). Personal search of the appellant/accused was conducted and a memo (Ex.PD) in this regard was prepared. Appellant/accused was arrested vide arrest memo (Ex.PE). Ruqa (Ex.PC) was sent through HC Nirmal Singh on the basis of which formal FIR (Ex.PC/1) was registered by ASI Dharam Singh. After completion of usual formalities of investigation, challan was presented in Court against the appellant/accused.

3. After making due compliance of the provisions of Section 207 Cr.P.C., charge was framed against the appellant/accused to which he pleaded not guilty and claimed trial.

4. The prosecution, in order to prove its case, examined five witnesses and closed its evidence.

5. Appellant/accused did not lead any evidence in his defence.

6. After hearing arguments of both the sides and perusing the evidence on record, the trial Court convicted and sentenced the appellant/accused as stated above.

CONTENTIONS

7. Mr. Amaninder Preet, Legal Aid Counsel appearing for the appellant contends that the alleged recovery of 1 kg of *charas* does not fall within the ambit of 'commercial quantity' for which minimum punishment prescribed is 10 years. As per prosecution version, the appellant was allegedly found in possession of 1 kg *charas* and punishment for committing said offence has been prescribed under Section 20 of the NDPS Act. As per sub-clause (b) (ii) (B) of Section 20 of the NDPS Act, where the quantity of contraband seized is lesser than commercial quantity but greater than small quantity, the accused shall be punished with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees. As such, the learned trial Court gravely erred by treating the alleged seized contraband from the appellant as 'commercial quantity' and sentencing him to undergo the minimum prescribed period of sentence i.e. RI for 10 years. In support of his arguments, he relied upon the judgments passed by this Court in ***Rajnish Kumar @ Chapta Vs. State of Punjab 2013 (26) RCR (Criminal) 514; Vakil Vs. State of Haryana 2015 (6) RCR (Criminal) 754; Dalip Singh Vs. State of Haryana 2016 (2) RCR (Criminal) 152 and Jagat Singh Vs. State of Haryana, 2015 (1) RCR (Criminal) 837.***

8. Learned counsel for the appellant further assails the impugned judgment of conviction and order of sentence on the ground that although, the recovery of the contraband was effected from the appellant when he was present at a railway platform, which always remains crowded and has a large footfall of people, yet, no explanation came forth from prosecution for not joining any independent witness and therefore, the learned trial court has wrongly convicted the appellant by placing reliance solely on the testimonies of official witnesses.

9. Learned counsel for the appellant also submits that the appellant has been suffering the agony of trial since 27.06.2012 as the appeal is also an extension of trial. The appellant is the sole earning member of the family, having four children to look after. He is not involved in any other criminal case since the suspension of his sentence by this Court vide order dated 14.09.2016 during the pendency of present appeal and it would be just and expedient to reduce the sentence awarded to the appellant by the learned trial Court to that already undergone, as the appellant is a law abiding citizen and has reformed himself after his conviction.

10. At this stage, counsel for the appellant submits that he is not assailing the judgment of conviction on merits, rather restricts his prayer qua modification of the order of sentence to the period already undergone.

11. Per contra, learned State counsel submits that the trial Court has passed a well reasoned judgment after taking into consideration entire evidence and the material available on record and there is no perversity or illegality in the findings returned by it.

ANALYSIS AND OBSERVATION

12. Undisputedly, the appellant is alleged to have been found in possession of 1 kg of *charas*. Section 2 (viia) of the NDPS Act defines 'commercial quantity', which is reproduced as under:-

“2 (viia) “commercial quantity” in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;”

13. As per the notification dated 19.10.2001 specifying 'small quantity' and 'commercial quantity', at Sr. No.23, 'small quantity' for *charas* is provided as

100 gms and the 'commercial quantity' is provided as more than 1 kg. As such, the 'commercial quantity' would be greater than the quantity of 1 kg of *charas* as specified by the Central Government by its notification *ibid*. Punishment for contravention in relation to cannabis plant and cannabis is provided under Section 20 of the NDPS Act, which reads as under:-

“20. Punishment for contravention in relation to cannabis plant and cannabis. *Whoever, in contravention of any provisions of this Act or any rule or order made or condition of licence granted thereunder, -*

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable -

(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine, which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees: Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

14. A perusal of the aforementioned statutory provisions indicates that case of the appellant falls under Section 20 (b) (ii) (B) of the NDPS Act, which provides

punishment of rigorous imprisonment for a term which may extend to 10 years.

A two Judge Bench of the Hon'ble Supreme Court in ***State of Haryana Vs. Janak Singh AIR 2013 SC 3246*** has dealt with the power of this Court to reduce the sentence as to the one already undergone in cases where the accused is convicted for an offence for which a minimum sentence is prescribed by law. Speaking through Justice Ranjana Prakash Desai, the Hon'ble Supreme Court observed as under:-

“10.....It was open for the respondents to press the appeals on merits and pray for acquittal. Had the case been argued on merits, the High Court could have acquitted the respondents if it felt that the prosecution had not proved its case beyond reasonable doubt. Assuming the respondents did not press the appeals, the High Court had to still consider whether the concession made by the counsel was proper because it is the duty of the court to see whether conviction is legal. But, once the respondents stated that they did not want to press the appeals and the High Court was convinced that conviction must follow, then, ordinarily it could not have reduced the sentence to the sentence already undergone by the respondents which is below the minimum prescribed by law. The High Court could have done so only if it felt that there were extenuating circumstances by giving reasons therefor. While reducing the sentence, the High Court has merely stated that it was “just and expedient” to do so. These are not the reasons contemplated by the proviso to Section 376(1) of the Indian Penal Code. Reasons must contain extenuating circumstances which prompted the High Court to reduce the sentence below the prescribed minimum. Sentence bargaining is impermissible in a serious offence like rape. Besides, at the cost of repetition, it must be stated that such a course would be against the mandate of Section 376(1) of the IPC.”

A two Judge Bench of the Hon'ble Supreme Court in ***State of Rajasthan Vs. Dhool Singh (2004) 12 SCC 546*** speaking through Justice N. Santosh Hegde, has held as under:-

“18. Before concluding, we must refer to a disturbing tendency noticed by us very often in some of the judgments impugned before this Court. As in this case in some appeals, we find the appellate or revisional courts reduce the sentence while maintaining the conviction to sentence already undergone without even noticing what is the period already undergone. The courts should bear in mind that there is a requirement in law that every conviction should be followed by an appropriate sentence within the period stipulated in law. Discretion in this regard is not absolute or whimsical. It is controlled by law and to some extent by judicial discretion, applicable to the facts of the case. Therefore, there is a need for the courts to apply its mind while imposing sentence.”

15. A two Judge Bench of the Hon’ble Supreme Court in **Ajmer Singh Vs. State of Punjab (2005) 6 SCC 633** has observed as under:-

“10. We have noticed in several judgments of the High Courts which have come up for consideration before us that while reducing the sentence to the period already undergone, no notice is taken of the actual sentence undergone by the accused. There is nothing on record to indicate the period of sentence already undergone by the accused. We, therefore, consider it appropriate to observe that whenever a court reduces the sentence of an accused to the period already undergone, it should categorically notice and state the period actually undergone by the accused.”

A two Judge Bench of the Hon’ble Supreme Court in **Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926**, speaking through Justice V.R. Krishna Iyer, has observed as under:-

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to antisocial behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology is in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is

thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

16. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

17. A perusal of the *ratio decidendi* culled out in the above-mentioned judgments of the Hon’ble Supreme Court indicates that in order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

18. As per the custody certificate produced by the learned State counsel, details of custody period of the appellant are tabulated as under:-

Sr. No.	Particulars	Period	Year	Month	Days	Total Days
1.	Custody as under trial	27.06.2012 to 27.03.2014	1	9	3	638
2.	Custody after conviction	27.03.2014 to 17.09.2016	2	5	25	905
3.	Interim bail period, if any					
4.	Parole availed					
5.	Furlough availed					
6.	Details of overstay/absent from parole/furlough					
7.	Actual custody period after conviction (Sr. No.2, 3, 4 & 6)		2	5	25	905
8.	Actual undergone period (Sr. No.1+7)		4	2	23	1543
9.	Earned Remission + GR		0	0	0	0
10.	Total sentence including remission (Sr. No.8+9)		4	2	23	1543

19. A perusal of the judgment of conviction passed by the trial Court indicates no perversity in the findings of the trial Court and the same are based on correct appreciation of evidence available on record. Counsel for the appellant has not assailed the judgment of conviction on merits, rather he restricted his prayer only qua quantum of sentence.

CONCLUSION

20. Concededly, the appellant herein was apprehended while being in possession of 1 kg of *charas*, which is a ‘non-commercial quantity’ and therefore, he committed an offence, which is punishable under Section 20 (b) (ii) (B) of the NDPS Act for a maximum sentence of 10 years. The trial Court awarded a

maximum punishment of rigorous imprisonment for 10 years with fine of Rs.1 lakh to the appellant, which is again maximum sentence of fine, and in default of fine, to further undergo rigorous imprisonment for a period of six months. This Court vide order dated 17.07.2014, while admitting the present appeal, stayed recovery of fine from the appellant during the pendency of the appeal.

21. It is also a conceded position that recovery of 1 kg of *charas* does not fall within the definition of 'commercial quantity, as the said quantity is not greater than the quantity specified by the Central Government vide notification dated 19.10.2001. The FIR in the present case was lodged on 27.06.2012 and the appellant is suffering agony of trial for more than 11 years. The appellant, who is about 49 years of age is the sole earning member of his family, having four children to look after. After his conviction, he has grown into a law abiding citizen with a desire to live a fruitful and peaceful life. He is not involved in any other criminal activities after his conviction in the present case and during the pendency of the present appeal. There is no other criminal case pending against him. Accordingly, this Court is of the opinion that it would be in the interest of justice if the sentence of rigorous imprisonment for 10 years awarded to the appellant is reduced to the period already undergone by him.

22. Consequently, the present appeal is disposed of in the following terms:-

- (i) The judgment dated 27.03.2014 passed by the Special Court (Fast Track Court), Patiala convicting the appellant is upheld, however, the order of sentence dated 27.03.2014 is modified and the sentence of rigorous imprisonment for 10 years awarded to the appellant is reduced to the period of sentence already undergone by him.
- (ii) The sentence of fine of an amount of Rs.1 lakh imposed upon the appellant by the trial Court is reduced to an amount of Rs.30,000/-,

which shall be deposited by him before the trial court within a period of one month from the date of receipt of certified copy of this order, failing which appellant will undergo rigorous imprisonment for a period of three months.

- 23. Bail bonds and surety bonds of the appellant stand discharged.
- 24. Pending miscellaneous application(s), if any, shall also stand disposed of.
- 25. The case property, if any, may be dealt with as per rules after expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

(HARPREET SINGH BRAR)
JUDGE

August 11, 2023
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	Yes