

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

395

CRA-S-3836-SB-2016
Date of decision: 31.05.2023

Dheera Singh

...Appellant

Versus

State of Punjab

...Respondent

Present: Mr. Dheeraj Kumar, Advocate with
Mr. H. P. S. Ishar, Advocate for the appellant

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

AMAN CHAUDHARY. J.

1. The present appeal has been preferred against the judgment and order dated 03.02.2016 passed by learned Special Court, Amritsar, whereby the appellant had been convicted and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.30,000/- and in default of payment of fine, to further undergo RI for six months, for the offence punishable under Section 22 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act').

2. Succinctly, the facts of the case are that on 02.04.2014, while ASI Harjit Singh and other police officials on patrolling duty were present in the area of Kathu Nangal Mann village, they on reaching near bridge Nakhash, saw a person coming towards them, carrying one polythene bag in his right hand. On seeing the police party, he threw the bag and tried to turn back towards the village but on suspicion of carrying some narcotic substance, he was apprehended by the said police officials. Before

conducting the search, the Investigating Officer tried to join a public witness but nobody agreed. The person, who was apprehended disclosed his name as “Dheera”. After apprising him of his right to be searched in the presence of a Gazetted officer, the accused reposed confidence in the Investigation Officer. On search of the plastic bag, intoxicant powder was recovered, out of which two separate samples 10 grams each were prepared and the remaining 90 grams was converted into a parcel. The said sample parcels were sealed with seal impression ‘HS’ and thereafter, the seal was handed over to HC Ajit Singh.

3. After completing the investigation, final report under Section 173 CrPC was presented in the Court, upon which the accused-appellant was charged under Section 18 of the 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 prosecution witnesses. On closure of prosecution evidence, when examined under Section 313 Cr.P.C. The accused while denying all the incriminating circumstances appearing in the prosecution evidence against him pleaded innocence and alleged false implication. In defence, no witness was examined.

5. The special Court thoroughly examined the evidence and while observing that the prosecution has proved its case beyond reasonable doubt, convicted and sentenced the appellant as noticed above.

6. Hence, the present appeal.

7. Learned counsel for the appellant, at the outset, submits that he does not wish to challenge the judgment of the conviction, however, prays that the sentence of the appellant may be reduced to the period of one year

five months and two days already undergone, he is a rickshaw puller, a sole bread earner, having aged mother, wife and two children, apart from that, the recovery effected was of non-commercial and during bail, he did not commit any offence. He relies on **State of Haryana vs. Joginder Ram**, 2015 (6) RCR (Cri) 97, **Mukesh Kumar vs. State of MP. (Now Chhattisgarh)**, 2015 (1) RCR (Cri) 251 and **Tarsem Singh vs. State of Punjab**, 2017(2) RCR (Cri) 109.

8. Learned State counsel opposes the appeal on the ground that the trial Court after appreciating every aspect of the matter has rightly convicted and sentenced the appellant, therefore, he prays for the dismissal of the present appeal.

9. Heard the learned counsel for the parties and perused the record.

10. The appellant has given up challenge to the conviction and has prayed for reduction of his sentence as having been undergone. Still having perused the judgment of the trial Court, the evidence was minutely examined therein and it was rightly observed that the prosecution has been able to prove its case beyond any reasonable doubt. As per the statements of PW1 ASI Ajit Singh, PW2 ASI Harjit Singh and PW4 SHO Gurbinder Singh, the accused-appellant was carrying some suspicious substance and as such, on noticing the police, he tried to flee after throwing away the same. On apprehension, he was found to be in conscious possession of 100 gms of Alprazolam, a psychotropic substance as proved by the report of the Chemical Examiner (PW2/8). The consent memo Ex.P3 reflected the compliance of Section 50 of the Act. Thus, there being no scope for interference in the judgment of conviction, it is affirmed.

11. Regarding the prayer of the learned counsel for the appellant that the sentence of the appellant may be reduced to the period already undergone, it would be profitable to make a reference to the judgments of Hon'ble The Supreme Court in the case of **Joginder Ram** (supra), wherein the sentence under the NDPS Act can be reduced to the period already undergone by the accused; in **Mukesh Kumar** (supra), a case of conviction of 06 months rigorous imprisonment, the sentence of the appellant was reduced to the period already undergone by him and 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. In **Tarsem Singh** (supra), this Court in a case wherein the recovery was of non-commercial quantity, noticing that the accused has undergone the substantive sentence and was not involved in any other case, reduced sentence to the period already undergone by him.

12. Considering the judgments referred to hereinabove and the mitigating circumstances that appellant belongs to the poor strata of the society, is the sole breadwinner of his family, having an aged mother, a wife, two growing up children, has faced the protracted trial for the last 9 years, neither committed any offence nor misused the concession of bail and the recovery affected from him was of non-commercial quantity of contraband, the ends of justice would be adequately met if the sentence of the appellant is ordered to be reduced to the period already undergone by him.

13. Resultantly, the conviction of the appellant is upheld whereas the sentence is ordered to be reduced to the period already undergone by him. However, the fine shall remain intact.

14. With the above modification in the order of sentence dated 03.02.2016 passed by the Special Judge, Amritsar, as noted above, the present appeal is partly allowed.

(AMAN CHAUDHARY)
JUDGE

31.05.2023

Mehak

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