

CRA-S-4394-SB-2014

2023:PHHC:089894

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

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CRA-S-4394-SB-2014 (O&M)
Date of decision : 14.07.2023

Angrej Singh @ Geja

.....Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.BS Aulakh, Advocate/ Legal Aid Counsel
for the appellant

Mr.Dhruv Sihag, AAG, Haryana

AMAN CHAUDHARY, J.

1. Challenge in the present appeal is to the judgment and order dated 27.08.2014 passed by Additional Sessions Judge, Kaithal, vide which the appellant was convicted and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.6,000/- for the offence punishable under Section 21 of the Narcotic Drugs and Substances Act, 1985 (for short 'NDPS Act').

2. Succinctly, the facts of the prosecution case are that on 20.03.2014, when SI Inder Singh alongwith other police officials was present at Bhuna Turning in connection with patrolling and detection, a secret information was received regarding carrying of narcotics by Angrej Singh @ Geja. The said information was sent to higher authority. A naka was laid at T-Point Bhuna Road. After some time a bus came, from which a person alighted and started going towards Bhuna side. On suspicion, he was apprehended and on enquiry he disclosed his name as Angrej Singh @ Geja.

He was served a notice under Section 50 of NDPS Act, to which he gave the option of the search before a Gazetted Officer. On a call made, DSP Tekan Raj alongwith his staff came at the spot, in whose presence, the search of the accused was conducted. A polythene was recovered from the right side pocket of the lower of the accused, on the opening of which, smack was found. Two samples of one gram each were segregated and remaining came out to be 3.20 grams. The samples alongwith residue were converted into parcels and sealed with seal 'IS'. DSP had also put his seal on them with 'TR'. A ruqa was sent to the police station, on the basis of which, an FIR was registered. On completion of investigation, challan was presented against the accused-petitioner and charges under Section 21 of NDPS Act were framed, to which he pleaded not guilty and claimed trial.

3. To prove its case, the prosecution had examined as many as 7 PWs. On closing of the prosecution evidence, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material was put to him, which were denied and he alleged false implication by the police and pleaded innocence. In defence, the accused did not lead any evidence.

4. After hearing the learned counsel for the parties and going through the evidence brought on record, the trial Court came to the conclusion that the prosecution had successfully proved its case in bringing home the guilt against the accused and convicted and sentenced him as noticed above in para no.1.

5. Hence, the present appeal.

6. Learned counsel for the appellant, at the very outset, submits that he does not wish to challenge the judgment of conviction and prays for

modification of order of sentence awarded to the appellant to the period already undergone on account of the facts, that he is poor person, only bread earner of the family, having wife and children; has undergone 4 month 21 days out of the total sentence of 6 months awarded to him; recovery was of non-commercial contraband; is not involved in any other case and has been facing the agony of protracted trial since 20.03.2014.

7. On the other hand, learned State counsel submits that the trial Court after appreciating the evidence led by the prosecution, has rightly convicted and sentenced the appellant, therefore, prays for the dismissal of the present appeal.

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

9. Though, the appellant has given up his challenge to the conviction and restricted his prayer only with regard to reduction of his sentence as undergone, in view of the mitigating circumstances mentioned above. However, this Court still deems it appropriate to examine the judgment of conviction. The trial Court had thoroughly examined the evidence and observed that the prosecution has proved its case beyond reasonable doubt against the appellant. The recovery was effected from him by following proper procedure and there is nothing on record to suggest that the appellant was falsely implicated in the case. From the statements of the witnesses, the link of evidence appears to be complete. Thus, the trial Court has rightly convicted the appellant as referred to above and there is no scope for interference in the findings recorded and conclusion arrived at by it. As

such, the conviction of the appellant is affirmed.

10. Hon'ble The Supreme Court in the case of **Mukesh Kumar vs. State of MP. (Now Chhatisgarh)**, (2014) 16 SCC 571, Hon'ble The Supreme Court, in case of a conviction of 6 months rigorous imprisonment had reduced the sentence of the appellant to 4 months, being the period already undergone by him. In the case of **S.K. Sakkar @ Mannan vs. State of West Bengal**, (2021) 4 SCC 483, Hon'ble The Supreme Court reduced the sentence of five years awarded under NDPS Act, to already undergone sentence of 2 years 4 months and 16 days, 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. Further, in **M.Sampat vs. State of Chhattisgarh**, (2021) 6 SCC 201, wherein narcotics were recovered from the truck, of which the appellant was an indigent helper (described as Conductor), the sentence was reduced to the period already undergone by him while considering the age of the appellant at the time of incident being 22/23 years and being a first time offender.

11. In **Tarsem Singh vs. State of Punjab**, 2016 SCC OnLine P&H 9236, the sentence of one and a half years as awarded to the appellant, was reduced to the period already undergone, being 3 months and 29 days by this Court on the grounds that the recovery effected from the appellant i.e. 40 grams of smack was non-commercial, the appellant was a first time offender, sole bread earner of the family and had faced the protracted criminal proceedings for almost 4 years.

12. Reverting to the facts of the present case as regards the prayer

made on behalf of the appellant is concerned, this Court considering the mitigating circumstances and the judgments referred to above, finds that 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 in view of the facts and circumstances of the present case, particularly, that the appellant is the first offender, recovery effected from him was non-commercial quantity of contraband, weighing 5.2 gms of smack, has undergone substantial sentence of 4 months and 21 days out of 6 months, is the sole breadwinner of his family, consisting of his wife as well as children and has faced the pangs of trial for the last about 9 years.

13. Accordingly, the judgment of conviction of the appellant is upheld, however, the sentence is ordered to be reduced to the period already undergone by him. The order of sentence dated 28.08.2014 passed by Sessions Judge, Kaithal is modified to the aforestated extent. However, the fine shall remain intact.

14. The appeal stands disposed of accordingly.

14.07.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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