

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

CRA-S-2200-2019

Reserved on: February 07, 2023

Pronounced on: February 22, 2023

U.T. Chandigarh

...Petitioner

Vs

Naveen Katoch

...Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Rajiv Vij, Additional PP,
for UT Chandigarh.

HARKESH MANUJA, J.

By way of present appeal, challenge has been made to the judgment dated 19.03.2019 passed by Special Court, Chandigarh, primarily on the question of quantum of sentence awarded to respondent.

Brief facts of the case are that on 26.10.2018, on account of suspicious activities by respondent on seeing the police party, he was apprehended and on checking, 15 grams of heroin was recovered from him. After completion of investigation, challan was presented against respondent under section 21 of The Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as NDPS Act), to which he pleaded guilty and did not claim trial. After being satisfied that the confession has been made by the accused/ respondent voluntarily without any coercion or undue influence, learned Special Court held him guilty and convicted under Section 21

of the NDPS Act.

With respect to the quantum of sentence, learned Special Court, keeping in view the age, character and antecedents of the respondent and the fact that the recovery of contraband effected from him was much less than the commercial quantity and just near to small quantity, sentenced him to undergo imprisonment for the period already undergone by him i.e. from 26.10.2018 to 08.12.2018 and to pay a fine of Rs 25,000/- vide order dated 19.03.2019, which has been impugned by way of present appeal.

Learned counsel for the appellant-State contends that undue leniency has been shown towards the respondent/ accused. He further contends that the contraband recovered from the respondent/ accused was more than small quantity and the maximum punishment under Section 21(b) of NDPS Act, 1985 is 10 years, while the period already undergone was merely 01 month 12 days, which is extremely inadequate.

I have heard learned counsel for UT Chandigarh and gone through the paper book of the case as well. In the present case, the maximum sentence specified under the NDPS Act is 10 years, however, no minimum sentence has been specified under the law. In the beginning itself, it would be beneficial to note that determining quantum of sentence primarily lies within the discretion of learned Special Court/ Trial Court, being more aware and sanguine about the surrounding circumstances and has the additional benefit of direct observation of the conduct of the parties. This discretion vested with

the Special Court/ Trial Court shall not be interfered until from the facts of the case, it appears that the sentence awarded is extremely disproportionate to the offence of the accused.

The facts of the present case need to be examined, in view of the key principles as mentioned above. Quantity of the contraband recovered from the accused in the present case is 15 grams of heroin (Small quantity: 5 gm, Commercial quantity: 250gm), which reflects that the accused/ respondent can at best is an end user of the contraband rather than being involved in the trade of the contraband. In that case, learned Special Court has rightly taken a reformatory approach as in this case, respondent does not deserve punishment and merely a lesson has to be taught, which he must have got during his imprisonment of 1 month 12 days. Considering his young age, keeping him in for longer duration in company with hardened criminals might push him to the wrong side of the law and that approach would be counter-productive in absence of any criminal antecedents of the respondent- accused.

In similar circumstances, a co-ordinate bench of this Court in case titled as **"Friank Moses vs Ut Of Chandigarh"** in CRA-S-1122-SB of 2017, reduced the sentence of the accused from 3 years to the period already undergone, which was approximately one year. In fact, it also needs to be taken into consideration that the case of the respondent/ accused in present case is better on many accounts like:-

- a. The quantity of heroine recovered in that case was 30

grams while in present case it is 15 grams.

- b. In that case, accused was also convicted for offence under Section 14 of the Foreigners Act, 1946.
- c. Accused in that case was convicted after a trial, while in present case; respondent has pleaded guilty and therefore, criminal legal system has not been burdened.

A Division Bench of Delhi High Court, in case titled as **“State (Govt. of NCT of Delhi) Vs. Sonu”** (CRL.A. 1256/2019 & CRL.M.A. 39532/2019) discussed many nuances while considering the quantum of sentence and observed that enhancement of sentence by an appellate Court is justified in cases only where it is manifestly inadequate. Division Bench also observed that the accused who enters the plea of guilt cannot stand on the same pedestal as an accused who is convicted and sentenced after a full-fledged trial, after taking into consideration the 142nd Report of Law Commission titled as “Concessional Treatment For Offenders Who On Their Own Initiative Choose To Plead Guilty Without Any Bargaining”, wherein it was observed as under:-

“It is not just and fair that an accused who feels contrite and wants to make amends or an accused who is honest and candid enough to plead guilty in the hope that the community will enable him to pay the penalty for the crime with a degree of compassion and consideration should be treated on par with an accused who claims to be tried at considerable time-cost and money-cost to the community.”

In view of the discussion held above, various mitigating factors being present in favour of the respondent accused, this Court is of the view that the sentence awarded is not manifestly inadequate and no interference is warranted in the judgment passed by Special Court on the quantum of sentence. Accordingly, present appeal is dismissed.

February 22, 2023
sanjay

(HARKESH MANUJA)
JUDGE

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