

CRR-2428-2022

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

CRR-2428-2022 (O & M)

Date of decision: 21.08.2023

Ajay Kumar alias Happy

...Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Sandeep Arora, Advocate,
for the petitioner.

Mr. C.L.Pawar, Addl. A. G. Punjab.

HARNARESH SINGH GILL, J. (ORAL)

1. Custody certificate dated 20.08.2023 by way of affidavit of the Additional Superintendent, Central Jail, Kapurthala, filed in the Court today, is taken on record.

2. The petitioner was tried in case bearing FIR No.112 dated 28.06.1999, registered at Police Station Division No.3, Jalandhar, under Section 61 of the Punjab Excise Act. Learned Judicial Magistrate Ist Class, Jalandhar, vide judgment and order dated 14.08.2007, held the petitioner guilty for the offence punishable under Section 61(1) (a) of the Excise Act and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three months.

3. Aggrieved there-against, the petitioner preferred an appeal before the learned Addl. Sessions Judge, Jalandhar, which had been dismissed vide impugned judgment dated 31.07.2009.

4. Still aggrieved, the petitioner has preferred the present revision

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petition.

5. During the course of hearing, learned counsel for the petitioner does not lay any challenge to the judgments of conviction of the petitioner recorded by the courts below and for that reason, the facts are not required to be reproduced here.

6. Learned counsel for the petitioner has made submissions only on the aspect of sentence on which this Court has heard him as well as the learned State counsel.

7. While making submissions qua the quantum of sentence, learned counsel for the petitioner would submit that the petitioner is the sole breadwinner of his family; that he has been facing the agony of trial since 1999 and that the petitioner has already undergone the actual sentence of 01 year and 04 days. Under these circumstances, the sentence imposed upon the petitioner may be reduced to the one already undergone by him. In support of his contentions, learned counsel for the petitioner relies upon the judgment rendered by the Hon'ble Supreme Court in SK.Sakkar @ Mannan Vs. State of West Bengal 2021 AIR (Supreme Court) 2870.

8. On the other hand, learned State counsel, while opposing the submissions made by the learned counsel for the petitioner, would submit that the sentence awarded to the petitioner is in proportion to the offence committed by him and that conduct of the petitioner during trial has not been quite fair and *bona fide* and that the petitioner does not deserve any leniency.

9. I have heard the learned counsel for the parties.

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10. Having heard the learned counsel for the parties and after a lucid examination of the record, this Court finds that both the courts below have rightly convicted and sentenced the petitioner under Section 61(1) (a) of the Excise Act. There is no manifest error in the concurrent findings recorded by the courts below.

11. Thus, in my opinion, in view of the evidence on record, there is no scope for any interference in the findings of the Courts below, so far as the conviction under Section 61(1) (a) of the Excise Act. Hence, the conviction of the petitioner under the aforesaid section is upheld.

12. However, the fact remains that the present FIR was registered on 28.06.1999 and out of the aforesaid sentence of 02 years, the petitioner has already undergone the actual sentence of 01 year and 04 days.

13. The Hon'ble Supreme Court in SK.Sakkar @ Mannan 's case (supra) has held as under:

“9. Faced with this, learned Senior Counsel for the appellant relies upon several mitigating circumstances to persuade us to reduce the sentence period. He passionately urges that: (i) the appellant has suffered protracted trial for more than 23 years; (ii) he alone has been convicted while his co-accused are acquitted; (iii) the appellant was not involved in any other case under the NDPS Act or other Penal Laws; (iv) the appellant has already undergone actual sentence of 2 years 4 months and 16 days out of the total sentence of five years; (v) and that the appellant has not misused the concession of bail granted by this Court on 02.11.2012.

10. We find some merit in the submission noticed above. It may be noted that the appellant committed the crime in the year 1997, i.e., much before the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 2001 came into force. The punishment for contravention in relation to cannabis plant or any other provision

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of the NDPS Act, in his case, would thus be regulated by the unamended Section 20 of the NDPS Act, as it stood before the amendment of 2001 and which reads as follows:

“20. Punishment for contravention in relation to cannabis plant and cannabis. Whoever, in contravention of any provision of this Act or any rule or order made or condition of license 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 ganja or the cultivation of cannabis plant, with rigorous imprisonment for a term which may extend to five years and shall also be liable to fine which may extend to fifty thousand rupees;

(ii) where such contravention relates to cannabis other than ganja, 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 and 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.”
(emphasis supplied)

11. *It is manifest from Section 20(i) of NDPS Act (as it stood in 1997), that even though a maximum sentence of five years RI and a fine of upto Rs. 50,000/- was prescribed but there was no minimum mandatory sentence. The Legislature had in its wisdom left it to the judicious discretion of a court to award the minimum sentence albeit guided by the well known principles on the proportionality of sentence. Taking into consideration the peculiar facts and circumstances of this case, it appears to us that the ends of justice would be adequately met if the appellant's sentence is reduced to the extent of the period he has already undergone. We order accordingly.*

12. *For the reasons(s) stated above, the appeal is allowed in part; the impugned judgments of the Special Judge and the High*

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Court are modified and the sentence of five years RI awarded to the appellant is reduced to the period of sentence already undergone. The bail bond of the appellant is discharged. However, the appellant shall be liable to pay fine of Rs. 20,000/- within two months, if already not deposited and in default thereof he will be liable to undergo RI for six months.”

14. Taking into consideration the agony of trial faced by the petitioner and further in view of the judgment of the Hon'ble Apex Court in SK.Sakkar @ Mannan 's case (supra), in my opinion, the ends of justice would be suitably met, if the sentence imposed upon the petitioner is reduced to the period already undergone by him.

15. In view of the above, while upholding the conviction of the petitioner under Section 61(1) (a) of the Excise Act, the sentence imposed upon the petitioner is reduced to the one already undergone by him, subject to deposit the costs of Rs.25,000/- with the District Legal Services Authority, Jalandhar. However, sentence of fine and default clause shall remain intact. Needless to mention that on depositing the aforesaid costs of Rs.25,000/- and the fine imposed by the trial Court, the petitioner be released forthwith in this case, if not required in any other case.

16. Disposed of in the aforementioned terms.

21.08.2023

parveen kumar

**(HARNARESH SINGH GILL)
JUDGE**

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No