

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

CRA-S-333-SB-2016
Date of decision : 27.04.2023

Jaswinder Singh @ Dara

...Appellant

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. PKS Phoolka, Advocate for the appellant

Mr. HS Sullar, Sr.DAG, Punjab

AMAN CHAUDHARY, J.

1. The present appeal has been filed assailing the judgment of conviction and order of sentence dated 20.01.2016, passed by the learned trial Court, vide which the appellant has been convicted and sentenced to undergo rigorous imprisonment for 10 months and to pay a fine of Rs.2000/- under Section 15 of the NDPS Act and in default of payment of fine to further under rigorous imprisonment for 1 month.

2. Succinctly, on 25.06.2014 the police on patrolling duty spotted a person carrying a plastic bag on his head, which he threw on seeing the police party and tried to conceal himself on the backside of *kotha*. However, on being apprehended, he disclosed his name as Jaswinder Singh @ Dara. Having taken to the spot, where the plastic bag thrown by him was lying, scattered poppy husk was found which was put in the same plastic bag, wherefrom two samples of 100 grams each were separated and the residue

weighed 15 kg. On receipt of chemical examiner report, the samples sent were found to be of poppy husk.

3. After investigation, final report under Section 173 Cr.P.C. was presented before the Court, upon which, the appellant was charged under Section 15 of the NDPS Act, to which he pleaded not guilty and claimed trial.

4. To bring home the guilt of the accused, the prosecution had examined PW-1 ASI Sukhjinder Singh, Investigating Officer, PW-2 HC Jagtar Singh and PW-3 Constable Amrinder Singh, besides placing on record other documentary evidence.

5. In his statement recorded under Section 313 of Cr.P.C., accused-appellant denied all the incriminating circumstances appearing against him in the prosecution case and pleaded innocence. However, he in his defence did not examine any witness.

6. After hearing the learned counsel for the parties and going through the evidence brought on record, the learned trial Court came to the conclusion that the prosecution has proved its case beyond reasonable doubt against the accused-appellant. Accordingly, he was convicted and sentenced as mentioned above in para no.1.

7. Aggrieved appellant has filed the present appeal.

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

9. At the very outset, learned counsel for the appellant, on instructions, states that he does not propose to challenge the impugned judgment of conviction on its merits. He however, prays for modification of the order of sentence for the period already undergone by the appellant. So as to persuade this Court, he described the predicament of the appellant- a

45 year old, has faced the trial for about 9 years, having aged parents, who are also ailing, is the sole breadwinner of his family and his brother is suffering from an advanced stage of liver disease. He is a first time offender, remained in custody during trial for a period of one month and five days and after conviction has undergone a sentence of 2 months and 19 days, out of 10 months, with no allegations of misuse of bail granted to him. He submits that the appellant is not pressing the question of legality of sentence but prays only for taking a lenient view with regard to the quantum of sentence.

10. Even though, the challenge to conviction has been given up, however, this Court after perusal of the evidence on record and the judgment passed by the trial Court, finds the appeal to be bereft of merits. It is evident that the credibility of PW-1, the Investigating Officer, as also PW-2, HC Jagtar Singh accompanying him while recovery was effected, PW-3 Constable Amarender Singh, who was responsible for safe transit and deposit of sample to the office of Chemical Examiner, remained unshaken, barring a few discrepancies, which did not create a dent in the prosecution version. The admissibility of recovery as well as linkage of the petitioner therewith completely established. Sending special report under Section 57 of NDPS Act and filling up of Form-29 etc. duly proved, hence, the conviction of the appellant is upheld.

11. Apropos the submission made by the learned counsel for the appellant, notably, the contraband recovered from him was between small and commercial quantity and the mitigating circumstances of the appellant as brought forth are that he has suffered the pangs of a protracted trial that stretched for close to nine years, has aged ailing parents dependent on him, is the sole breadwinner of his family, his brother is suffering from advanced

stage of a serious ailment. He has undergone a substantive sentence of 2 months 19 days out of the 10 months awarded. He has learnt a lesson, as has no criminal antecedents. There has been no incident brought to the notice of this Court of his having misused the bail granted at the trial or appellate stage. Hon'ble The Supreme Court of India 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 in the cases of **SK. Sakkar @ Mannan vs. State of West Bengal**, (2021) 4 SCC 483, reduced the sentence of five years awarded under NDPS Act, to already undergone sentence of 2 years 4 months and 16 days and likewise, 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.

12. Considering the peculiarity of the facts and circumstances of the case and deriving strength from the afore-referred judgments, this Court is of the firm view that ends of justice would be adequately met if the sentence of the appellant is reduced to the extent of the period he has already undergone. The appeal is allowed in part and the order of sentence is modified accordingly.

27.04.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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