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

CRM-959-2024 in/and
CRA-S-93-2024 (O&M)
Date of decision: 12.03.2024

Manoj

....Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parveen Sharma, Advocate
for the appellant

Ms. Geeta Sharma, DAG Haryana

HARPREET SINGH BRAR, J.

CRM-959-2024

At the outset, learned counsel for the appellant wishes to withdraw the application regarding suspension of sentence with a request to take up the main case for hearing and restricts his prayer to quantum of sentence.

Dismissed as withdrawn.

CRA-S-93-2024

1. The instant appeal has been preferred against the judgment dated 19.12.2023 passed by learned Additional Sessions Judge, Sonipat in FIR No. 57 dated 16.10.2019 filed under Section 15 of the Narcotic Drugs and Psychotropic Substances, 1985 (hereinafter 'NDPS Act') registered at Police Station HSIIDC, Bari, District Sonipat whereby the appellant was convicted and sentenced as under:

Offence	Sentence
Section 15B of the NDPS Act	Rigorous imprisonment of 2 years and a fine of Rs. 10,000/-, in default of which simple imprisonment of 2 months

FACTUAL BACKGROUND

2. The facts, in brief, are that on 16.10.2019, a police party headed by ASI Hari Parkash was patrolling the area of Bega Road, Sahapur turn when they received a secret information regarding the appellant and co-accused De-vender indulging in sale of contraband. The police party reached the spot in half an hour and found two persons holding plastic bags, coming on foot from Ram Nagar side. They were apprehended on suspicion and a search was conducted in the presence of DSP Sandeep Kumar. In furtherance of the same, 4 kg 340g chura was recovered from the bag carried by the appellant.

3. On finding a *prima facie* case, charge under Section 15 of NDPS Act was framed against the accused to which he pleaded not guilty and claimed trial. The prosecution examined 12 witnesses to prove its case. All the incriminating evidence was put to the appellant-accused and in his statement recorded under Section 313 of the Cr.P.C. wherein he denied all evidence and pleaded false implication but did not lead any evidence in his defence.

4. On assessing all the material available on record, the appellant was convicted by the learned trial Court vide judgment dated judgment dated 19.12.2023. Aggrieved by the same, the appellant preferred the instant appeal.

CONTENTIONS

5. Learned counsel for the appellant contends that he is not assailing the impugned judgment of conviction dated judgment dated 19.12.2023 on merits and restricts his prayer to modification of the order of quantum of sentence as the appellant has already undergone 3 months 22 days of actual custody.

6. Per contra, learned State counsel opposes the prayer of the appellant as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, he does not deserve any leniency.

OBSERVATIONS AND ANALYSIS

7. I have heard the learned counsel for the parties and perused the record with their able assistance.

8. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench of the Hon'ble Supreme Court in **Ravada Sasikala v. State of AP AIR 2017 SC 1166**, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was

committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

9. As per the custody certificate produced by the learned State counsel, details of custody period of the appellant are tabulated as under:-

Sr No.	Particulars	Period	Duration
1.	Custody under trial	17.10.2019 to 14.11.2019	29 days
2.	Custody after conviction	19.12.2023 to 11.03.2024	2 months 23 days
3.	Interim Bail	-	-
4.	Actual custody period after conviction		3 months 22 days
5.	Actual undergone period		3 months 22 days
6.	Earned remission		-
7.	Total sentence including remission		3 months 22 days

10. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. Moreover, learned counsel for the appellant has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION

11. The FIR in the present case was lodged on 16.10.2019 and the appellant has been suffering the agony of trial since the last about 5 years. Since his conviction, the appellant has grown into a law-abiding citizen and desires to live a peaceful life. As per his custody certificate, out of the total sentence of 2 years in this case, he is not involved in any other criminal case and has undergone actual sentence of 3 months 22 days. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous im-

prisonment of 2 years awarded to the appellant is reduced to the period already undergone by him.

12. Consequently, the present appeal is disposed of in the following terms:-

- (i) The judgment dated 19.12.2023 passed by learned Additional Sessions Judge, Sonipat convicting the appellant is upheld, however, the order of sentence is modified to the extent that the sentence of rigorous imprisonment for 2 years along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.
- (ii) The sentence of fine of an amount of Rs. 10,000/- imposed upon the appellant by the trial Court is increased to Rs.20,000/-. The appellant is directed to deposit the increased amount of fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the appellant shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

12.03.2024
Neha

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