

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

227

CRA-S-312-2024 (O&M)
Date of Decision: 07.03.2024

Nirmal Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amarjit Singh Virk, Advocate
for the appellant.

Mr.Vikas Bharadwaj, AAG Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. The instant appeal has been preferred against the judgment of conviction dated 15.01.2024 passed by learned Additional Sessions Judge-cum- Judge, Special Court, Kurukshetra in FIR No. 167 dated 16.05.2018 registered under Sections 15, 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘NDPS Act’) wherein the appellant was sentenced as under:-

Offence	Sentence
Section 15 NDPS Act	Rigorous imprisonment of 2 years and a fine of Rs. 5000/-, in default of which rigorous imprisonment of 1 month.

FACTUAL BACKGROUND

2. The facts, in brief, are that on 16.05.2018, the police party was patrolling the area of Dhayangla bus stand on the Ladwa-Mustafabad road, where the appellant was seen standing with a bag in his right hand. On seeing the police, the appellant tried to flee but fell and some poppy husk scattered from the bag he was carrying. The bag was searched and 3.5 kg of poppy husk was recovered from it.

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 10 witnesses to prove its case. All the incriminating evidence was put to the appellant-accused in his statement recorded under Section 313 of the Cr.P.C. wherein he pleaded false implication but did not examine any witness in his defence.

4. On assessing all material available on record, the appellant was convicted by the learned trial Court vide judgment dated 15.01.2024.

CONTENTIONS

5. Learned counsel for the appellant contends that he is not assailing the impugned judgment of conviction dated 15.01.2024 on merits and restricts his prayer to modification of the order of quantum of sentence to that of the sentence already undergone by the appellant as has already undergone a period of 2 months 24 days of custody and is not involved in any other criminal activity.

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 learned counsel for the parties and perused the paper-book 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	18.05.2018	1 month 2 days
2.	Custody after conviction	15.01.2024 to 06.03.2024	1 month 22 days
3.	Interim bail	-	-
4.	Actual custody period after conviction		1 month 22 days
5.	Actual undergone period		2 months 24 days
6.	Earned remission		-
7.	Total sentence including remission		2 months 24 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 16.05.2018 and the appellant has been suffering the agony of trial since the last 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, he is not involved in any other case and out of the total sentence of 2 years in this case, he has undergone actual sentence of 2 months 24 days. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of rigorous

imprisonment 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 15.01.2024 passed by the learned Additional Sessions Judge-cum- Judge, Special Court, Kurukshetra 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. 5000/- imposed upon the appellant by the trial Court is increased to Rs.10,000/-. 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.

07.03.2024
Rajeev (rvs)

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No