

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

119

CRA-S-2093-SB-2004 (O&M)
Date of decision: 31.01.2024

Mahabir Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. BS Mamli, Advocate
for the appellant.

Mr. Jagdish Manchanda, Addl. AG, Haryana.

AMAN CHAUDHARY, J.

1. Challenge in the present appeal is to the judgment/order dated 01/04.10.2004, passed by the learned Additional Sessions Judge, Fatehabad, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for one year alongwith fine of Rs.10,000/- and in default of payment of the same, to further undergo rigorous imprisonment for three months, for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').
2. Shorn of unnecessary details, on 22.11.2002, when ASI Madan Lal alongwith other police officials were on patrolling duty in connection with the checking of miscreants and suspected vehicles, they apprehended the accused in possession of a bag. After apprising of his rights, search was conducted and recovery of 7 Kgs of poppy husk was effected. The requisite samples were drawn and sealed. Ruqa was sent, on the basis of which, an FIR was registered.
3. After completion of investigation, final report under Section 173

Cr.P.C. was presented in the Court against the accused. On finding a prima facie case, charges were framed against him, to which he pleaded not guilty and claimed trial.

4. The prosecution, in order to prove its case, examined as many as 6 witnesses. Thereafter, the statement of the accused was recorded under Section 313 Cr.P.C., whereby incriminating evidence was put to him, which he denied. He pleaded innocence and false implication.

5. The trial Court, after appreciating the evidence, came to the conclusion that prosecution has proved its case beyond any reasonable doubt, and accordingly convicted and sentenced the appellant as mentioned in para No.1 above.

6. Aggrieved appellant is before this Court.

7. Learned counsel for the appellant, at the outset, gives up the challenge to his conviction and prays for reducing the sentence to the period already undergone, it being 4 months and 4 days, on the ground that he is not involved in any other case under this Act; sole breadwinner of the family; belongs to the poor strata of society; having three children of marriageable age; never misused the concession of bail and has been facing the agony of protracted trial for the last 22 years.

8. Learned State counsel opposes the appeal on the ground that the trial Court after evaluating the evidence has rightly convicted the appellant and the sentence awarded to him cannot be said to be excessive, therefore, he prays for the dismissal of the present appeal. He, however, affirms the fact of the non-involvement of the appellant in any other case under this Act as per the custody certificate.

9. Heard the learned counsel on either side and perused the record with their able assistance.

10. Evidently, PW-5 ASI Madan Lal had deposed that the accused-appellant was apprehended and found to be in conscious possession of the alleged contraband, which fact was corroborated by PW4-ASI Chelu Ram. As per the FSL report Ex.P13, contents of contraband were opined to be 'poppy husk'. Link evidence is complete. Thus, there is no scope for interference in the findings recorded therewith and the conclusion arrived at by the trial Court. As such, his conviction is upheld.

11. Insofar as the prayer for reducing the sentence to the period already undergone is concerned, it would be worthwhile to make a reference to the judgment in **S.K. Sakkar @ Mannan vs. State of West Bengal**, (2021) 4 SCC 483, wherein the accused was convicted under Section 20 of the Act and Hon'ble the Supreme Court reduced the sentence of five years to 2 years, 4 months and 16 days, by considering that the occurrence took place in 1997 and he was not a habitual offender, rather a first-time convict.

12. Furthermore, in **Naresh Kumar vs. State of Haryana** in CRA-S-796-SB-2005, decided on 24.02.2023, the sentence of the appellant i.e. 3 years and 6 months, convicted under Section 15 of the Act, was modified to the period undergone i.e. 8 months and 25 days already, by holding that no useful purpose will be served by sending him to jail after 22 years from the date of incident, in view of the fact that he was only about 28 years old at that time.

13. Humanistically viewing, the appellant having suffered the ignominy of trial since long; successfully warded off his crime-proneness-an evident learning of a lesson; his socio-economic circumstances, this Court finds

extenuation to be implicit. Thus, it would serve the ends of justice to reduce his sentence to the period already undergone, however, keeping the fine intact.

14. The order of sentence dated 04.10.2004 is modified to the aforesaid extent and as such, the present appeal stands partly allowed.

(AMAN CHAUDHARY)
JUDGE

31.01.2024
ashok

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