

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

122

CRA-S-2485-SB-2004
Date of decision: 23.01.2024

Darshan Kumar

....Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Veneet Sharma, Advocate for the appellant.

Mr. Manipal Singh Atwal, DAG, Punjab.

AMAN CHAUDHARY, J.

1. Challenge in the present appeal is to the judgment/order dated 24.11.2004, passed by the learned Judge Special Court, Amritsar, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for two years alongwith fine of Rs.50,000/- and in default of payment of the same, to further undergo rigorous imprisonment for three months, for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

2. Briefly put, the facts culminating in the filing of the present appeal are that on 01.09.2003, when ASI Harish Behl alongwith other police officials were on patrolling duty in connection with the checking of miscreants and suspected vehicles, they apprehended the accused possessing a bag. After apprising him about their rights, search was conducted in the presence of a Gazetted Officer and recovery of 1.5 Kgs of opium 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 4 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. In defence, he examined one witness.

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 03 months and 1 day, on the ground that he is not involved in any other case under this Act; belongs to poor strata of society; sole bread winner of the family; having four children of marriageable age; recovery was non-commercial; never misused the concession of bail and has been facing the agony of protracted trial for the last 21 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 dated 21.01.2024 issued by the Superintendent, Central Jail, Amritsar.

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

10. Evidently, PW-1 ASI Harish Behl 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-HC Labh Singh. As per Ex.PJ, proved by the Chemical Examiner, contents of contraband were opined to be 'opium'. Thus, the trial Court has rightly convicted the appellant and there is no scope for interference in the findings recorded therewith and the conclusion arrived at. 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. This Court, considering the judgments referred to above and the mitigating circumstances as pointed out by learned counsel for the appellant, finds that the ends of justice would be adequately served if the sentence of appellant is reduced to the period already undergone by him, while keeping the fine intact.

14. The order of sentence dated 24.11.2004 is modified to the aforesaid extent and as such, the present petition stands partly allowed.

(AMAN CHAUDHARY)
JUDGE

23.01.2024
Hemant

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