

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

119

CRA-S-1289-SB-2005 (O&M)
Date of decision: 01.02.2024

Gulab Nabi

....Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. K.S. Kahlon 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 13.07.2005, passed by the learned Special Judge, Ferozpur, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for four and half years alongwith fine of Rs.10,000/- and in default of payment of the same, to further undergo simple imprisonment for six months, for the offence punishable under Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act').

2. Succinct facts at first. On 20.11.1999, when ASI Mangal Singh 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 two gunny bags. After apprising of his rights, search was conducted and recovery of 20 Kgs and 500 grams 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, charge under Section 15 of the Act was 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. He pleaded innocence and false implication.

5. The learned trial Court after hearing the learned counsel for the parties, convicted and sentenced the accused-appellant as noticed 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 02 years and 04 days, on the ground that he is not involved in any other case under this Act; belongs to the poor strata of society; sole bread winner of the family; recovery was non-commercial; never misused the concession of bail and has been facing the agony of protracted trial for the last 24 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 non-involvement of the appellants in any other criminal case and the period undergone by them.

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

10. Evidently, PW1-HC Bhagwan Singh and PW2-ASI Mangal Singh ASI Jawahar Singh had deposed that the accused-appellant was apprehended and found to be in conscious possession of the alleged contraband, which fact was corroborated by PW3-Constable Gurdev Singh and PW4-SI Prem Kumar. As per FSL report Ex.P-16, the contents of contraband were opined to be 'Poppy husk'. 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. 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 13.07.2005 is modified to the aforesaid extent and as such, the present petition stands partly allowed.

(AMAN CHAUDHARY)
JUDGE

01.02.2024
M.Kamra

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No