

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

695

CRA-S-1980-SB-2006 (O&M)

Date of Decision: 10.05.2024

Sandeep Kumar

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:- Mr. Aneeshh Chopra, Advocate (Amicus Curiae)
for the appellant.

Mr. Aftab Singh Khara, Sr. DAG, Punjab.

KIRTI SINGH, J.

Instant appeal has been directed against the judgment of conviction and order of sentence dated 04.10.2006 passed by Special Judge (under The Narcotic Drugs and Psychotropic Substances Act, 1985) (hereinafter referred to as 'NDPS Act') Amritsar, whereby the appellant-accused has been held guilty for commission of offence punishable under Section 21 of NDPS Act and sentenced to undergo rigorous imprisonment for a period of 04 months and also sentenced to pay fine of Rs.100/- with default stipulation.

Factual Matrix

2. The facts in brief of the case which emerged from the record are that 10.08.2003, when Inspector Sukhwinder Singh, SHO of Police Station C-Division, Amritsar along with fellow police officials were present on patrolling, he received secret information to the effect that the

accused was selling smack on a Hero Honda motorcycle bearing registration No.PB08-W-4218 in the area of Dana Mandi and if a raid was conducted he could be apprehended with smack. Acting on this information, Inspector along with his fellow police officials reached Dana Mandi and saw the accused coming on a motorcycle who was apprehended and his identity was verified. Inspector Sukhwinder Singh apprised the accused of his legal right to be searched in the presence of a Gazetted Officer or Magistrate as it was suspected that he was carrying some narcotic substance to which the accused opted to be searched in the presence of a Gazetted Officer and his consent memo was prepared. Sh. Jagdish Singh Khera, DSP City-I, Amritsar was informed on wireless who arrived at the spot and on his arrival, he disclosed the identity to the accused whereupon the accused reposed confidence upon the said DSP and opted to be searched in his presence and his consent memo was prepared. Thereafter, on the search of the accused smack wrapped in glazed paper was recovered from the front pocket of the shirt worn by the accused out of which 05 grams was separated as sample and the remaining on weighment found to be 30 grams, separate parcels of which were prepared and sealed with the seal bearing impression SS.

3. After completion of investigation, report under Section 173 Cr.P.C. was presented in the Court. From the perusal of the report a *prima facie* case punishable under Section 21 of the NDPS Act was made out against the accused and he was charge-sheeted thereunder to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined 3 witnesses, besides producing documentary evidence. Statement of the accused under Section 313 Cr.P.C. was recorded but no evidence in his defence has been led by him.

Submissions by learned counsel for the parties

5. During the course of arguments learned counsel for the appellant has submitted that although, he does not wish to challenge the conviction of the appellant under Section 21 of the NDPS Act but he would be satisfied in case a lenient view is taken with respect to the sentence which has been awarded to the appellant. In this regard, he has submitted that the FIR in the present case is of the year 2003 and thus, the appellant has suffered agony of trial/bail/appeal for all these years and the appellant was granted the concession of bail and he has never misused that concession. It is further submitted that the appellant is about 44 years old and is not involved in any other criminal case. No purpose will be served by sending him behind bars after about 21 years. He has already mended his way of life and joined the mainstream of society. The appellant has already undergone 01 month and 18 days of actual custody out of sentence of 04 months awarded to him. Therefore, he has prayed that the appeal be partly allowed and the sentence awarded to the appellant be reduced to the period already undergone.

6. Learned counsel for the State has stated that the judgment of the learned trial Court below has been passed after considering the entire evidence and material on record. The other factual aspects have not been rebutted by the learned counsel for the State. He has also produced on record the custody certificate of the appellant, which is taken on record, as

per which, the period of custody as stated by the learned counsel for the appellant, is reiterated.

Analysis

7. After having heard learned counsel for the parties and perusing the paper book, this Court finds substance in the submissions made on behalf of the appellant regarding reduction of sentence.

8. On perusal of judgment passed by Trial Court, this Court is of the considered view that the Trial Court has not committed any error in appreciation of evidence available on record. Further, it is found that the Trial Court considered the evidence available on record and correctly found that the case of the prosecution is well supported by the witnesses and documentary evidence. The procedure was well followed by the prosecution and the witnesses have profoundly supported its case. The Trial Court has well considered the material available on record, hence no infirmity is found in the impugned order of conviction passed by the Trial Court, accordingly the same is upheld.

9. So far as the sentence is concerned, the matter is related to the incident happened on 10.08.2003, more than twenty one years ago. Since no minimum sentence is provided under the provision, the request of reducing sentence seems to be proper. The sentence of 04 months awarded by the trial Court can be reduced to already undergone i.e. 01 month and 18 days due to the following reasons:

- (i) Appellant is now about 44 years old, and facing the agony of protracted trial for about 21 years.

- (ii) As per custody certificate, the appellant was granted bail by this Court on 10.10.2006, however, he did not misuse the concession of same.
- (iii) The appellant is not involved in any other criminal case.
- (iv) The appellant has mended his way of life and joined the mainstream of the society.

10. The Hon'ble Supreme Court in **2006(4) RCR (Criminal) 645** titled as “**R. Soundarajan v. Seed Inspector, Coimbatore and another**” observed as under:-

“26. We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial Court, if not already paid, would be paid within four weeks from the date of this judgment.”

11. A co-ordinate Bench of this Court in **Rupesh Kumar @ Kala's** case (supra) has held as under:-

"Appellant had faced trial in FIR No. 58 dated 1.6.2016 registered at Police Station City Budhlada, District Mansa under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('the Act' for short). The trial Court vide judgment/order dated 5.9.2017 convicted the appellant for commission of offence punishable under Section 22 of the Act, and sentenced him to undergo two

years rigorous imprisonment and to pay a sum of Rs.5000/- as fine and, in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. Hence, the present appeal by the accused-appellant.

As per the prosecution case, appellant was found in conscious possession of 510 tablets of "Almax-05" containing the salt "Alprazolam" (51 strips of tablets of Alprazolam, each of 10 tablets) without any permit or licence.

During the course of arguments, learned counsel for the appellant has not challenged the conviction of the appellant under Section 22 of the Act as ordered by the Trial Court but has submitted that the sentence qua imprisonment of the appellant be reduced to the period already undergone by him. Learned counsel for the appellant has further submitted that the appellant is a poor man and confined in jail and has no means to pay the fine. Appellant is the only bread earner of the family. In support of his arguments, learned counsel has relied upon the judgment in Mukesh v. State of M.P. 2015 (1) RCR (Criminal) 251 where in Hon'ble the Supreme Court has reduced the sentence to already undergone. Learned counsel for the appellant has also placed reliance on the judgment of this Court in Balvinder Singh v. State of Haryana 2012 (2) RCR (Criminal) 458, wherein it was held that the contraband recovered from the accused does not fall within the definition of commercial quantity and the ends of justice would be best met if the substantive sentence of imprisonment be reduced to that already undergone by him.

A perusal of the custody certificate of the appellant, placed on record reveals that the appellant has undergone about one year three months and seven days of actual sentence and is not involved in any other criminal case. Appellant has been facing criminal proceeding since the year 2016. Moreover, recovery of 510 tablets of "Almax05" containing the salt "Alprazolam" effected from the possession of the accused falls in the ambit of non-commercial quantity.

Keeping in view the submissions made by learned counsel for the appellant, it would be just and expedient to reduce the sentence qua imprisonment of the appellant to the period already undergone by him."

Conclusion

12. Accordingly, keeping in view the submissions made by the learned counsel for the appellant, it is a fit case where the sentence qua imprisonment is liable to be reduced to already undergone by the appellant. Hence, the conviction of the appellant under Section 21 of the NDPS Act is maintained and the sentence qua the imprisonment of the appellant is reduced to the period already undergone by him. The bail bonds of appellant-accused stand discharged.
13. Pending miscellaneous application(s), if any, shall also stand disposed of.
14. The case property if any may be dealt with as per rules after expiry of period of limitation for filing the appeal(s). Record of the case be sent back to the Court below.

(KIRTI SINGH)
JUDGE

10.05.2024
Ramandeep Singh

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