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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-1543-SB-2002 (O&M)
Date of decision: 08.05.2024

Bhupinder Singh @ Bhinder

... Appellant

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Malkeet Singh, Advocate
for the appellant.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This appeal has been preferred against the judgment of conviction dated 07.09.2002 and the order of sentence of even date passed by learned Judge, Special Court, Ludhiana, in FIR No.232 dated 01.12.2000 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Sidhwan Bet, District Ludhiana.

2. The appellant was convicted and sentenced under Section 15 of NDPS Act and was ordered to undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.5,000/- along with default mechanism.

3. Brief facts of the case are that on 01.12.2000, ASI Jaswant Singh along with other police officials, in a private vehicle, was on patrolling on the bank of canal towards Village Gorsian Makhan and 50 yards behind the bridge, from the side of Village Gorsian Makhan, a person, carrying a jute bag on his head, was seen and on seeing the police party, he turned on his left hand side. On suspicion of having some intoxicant substance in the jute bag, ASI Jaswant Singh asked the accused to get search of the bag conducted in the presence of a Gazetted Officer or a Magistrate. However, the accused reposed confidence in him and he recorded statement of the accused Ex.PA and also conducted search of the jute bag, in which poppy husk was found. Out of the recovered poppy husk, two samples of 250 grams were separated and bulk parcel, on weighment was found to be 19 1/2 kgs and was again put in the same jute bag. Sample parcels and bulk parcels Ex.P3 were prepared and sealed with the seal 'JS'. ASI Jaswant Singh prepared the impressions of the seal including the chit Ex.P1 and the case property was taken into possession vide recovery memo Ex.PB. Thereafter, ASI Jaswant Singh sent a ruqa Ex.PC to the police station, on the basis of which, formal FIR Ex.PC/1 was registered by SHO Karnail Singh.

4. Learned counsel for the appellant contends that he is not assailing the impugned judgment of conviction dated 07.09.2002 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 he has already undergone total sentence of 07 months and 04 days 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.

7. I have heard learned counsel for the parties and perused the record with their able assistance.

8. In ***Deo Narain Mandal Vs. 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, the 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 Vs. 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 conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

9. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the same is 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.

10. The FIR in the present case was lodged on 01.12.2000 and the appellant has been suffering the agony of trial for the last more than 23 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 dated 08.05.2024, filed in the Court today, the appellant is not involved in any other case and has undergone total sentence of 07 months and 04 days in the instant case.

11. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the appellant is reduced to the period already undergone by him.

12. Consequently, present appeal is disposed of in the following terms:-

- (i) The judgment dated 07.09.2002 passed by learned Judge,

Special Court, Ludhiana is upheld, however, the order of sentence dated 07.09.2002 is modified to the extent that the sentence of rigorous imprisonment for 04 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.5,000/- imposed upon the appellant by learned trial Court is increased to Rs.10,000/-. The appellant is directed to deposit the increased amount of fine in the learned 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. All the pending miscellaneous application(s), if any, shall also stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

08.05.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No