

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

115

CRA-S-2468-SB-2004 (O&M)

Date of decision: 16.01.2024

Gurmeet Singh

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. GS Sandhu, Advocate for the appellant.

Mr. Jagdish Manchanda, Addl. AG, Haryana.

AMAN CHAUDHARY. J.

1. Challenge has been laid to judgment/ order dated 04/07.12.2004, passed by learned Judge, Special Court, Karnal, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for 2 years and to pay a fine of Rs.3000/- and in default of payment of fine, to further undergo RI for two months, for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act (for short 'the Act').
2. Succinctly, the facts as per the FIR are that on 23.03.2002 when ASI Virender Singh of CIA-II Karnal along with other police officials were on patrolling duty reached on the crossing of Nissing, Guniana and Ichanpur, the accused was seen coming from the side of village Guniana. He on seeing them started urinating but on suspicion, was apprehended with one yellow polythene bag in his right hand. After following the due procedure, search was conducted and opium was recovered wrapped in the said bag was recovered. Drawn samples and residue were sealed. Requ was sent, on basis

of which formal FIR was registered.

3. After investigation, final report under Section 173 CrPC was submitted before the Court. The accused-appellant was chargesheeted by the special Court for the offence punishable under Section 18 of the NDPS Act, to which he pleaded not guilty and claimed trial.

4. To bring home guilt of the accused, the prosecution examined as many as 7 witnesses. On closure of prosecution evidence, statement of the accused-appellant was recorded under Section 313 Cr.P.C. All the incriminating evidence was put to him, which was denied and pleaded innocence and false implication.

5. On scrutinizing the evidence led by the parties and hearing the counsel, the trial Court finding the prosecution proved beyond reasonable doubt, convicted and sentenced the accused-appellant as noticed above.

6. Hence, the present appeal.

7. Learned counsel for the appellant does not wish to challenge the judgment of conviction passed by the trial Court, however, he prays for taking a lenient view by reducing his sentence to a period of two months and thirteen days already undergone, as he is about 60 years of age, a poor person, sole breadwinner of his family including three children, who are marriageable, first offender and has not misused the concession of bail. In support of his submissions, he relies on **S.K. Sakkar @ Mannan vs. State of West Bengal**, (2021) 4 SCC 483, **Issak Nabab Shah v. State of Maharashtra**, (2020) SCC OnLine SC 1174, **State of Haryana vs. Joginder Ram**, (2015) 6 R.C.R. (Criminal) 97 and the judgments passed by this Court in the cases of **Mangal Singh vs. State of Haryana** in CRA-S-4848-SB-2014 decided on 29.11.2022 and **Naresh Kumar vs. State of Haryana** in CRA-S-796-SB-2005, decided

on 24.02.2023.

8. Learned State counsel opposes the appeal on the ground that the trial Court after evaluating the evidence, has rightly convicted the appellant and sentence awarded to him cannot be said to be excessive, therefore, he prays for the dismissal of the present appeal.

9. Heard the learned counsel for the parties and perused the record with their able assistance.

10. Though, the appellant has given up his challenge to the conviction and restricted his prayer only with regard to reduction of his sentence as undergone i.e. 2 months and 13 days, as per the custody certificate dated 17.03.2023, issued by the Deputy Superintendent, District Prison, Karnal, in view of the mitigating circumstances mentioned above. However, this Court still deems it appropriate to examine the judgment of conviction. The trial Court had thoroughly examined the evidence and observed that the prosecution has proved its case beyond reasonable doubt against the appellant. The recovery was effected from him by adopting proper procedure and there is nothing on record to suggest that the appellant was falsely implicated in the case. From the statements of the witnesses, the link of evidence appears to be complete. Thus, the trial Court has rightly convicted the appellant as referred to above and there is no scope for interference in the findings recorded and conclusion arrived at by it. As such, the conviction of the appellant is affirmed.

11. Apropos the submission made by the learned counsel for the appellant, notably, the contraband recovered from him was of non-commercial quantity and the mitigating circumstances of the appellant as brought forth are that he has suffered the pangs of a protracted trial that stretched for close to 22 years, is a poor person aged about 60 years and sole breadwinner of his family. There has been no incident brought to the notice of this Court of his

having misused the bail granted at the trial or appellate stage. Hon'ble The Supreme Court of India considering the mitigating circumstances that included the petitioner having faced prolonged trial, not being involved in any other case and having not misused the concession of bail in the cases of **SK. Sakkar @ Mannan** (supra) and **Issak Nabab Shah** (supra), wherein the appellants were convicted under NDPS Act, but considering the mitigating circumstances, their sentence was reduced to the period already undergone, likewise, in **M. Sampat vs. State of Chhattisgarh**, (2021) 6 SCC 201, wherein the appellant, who was a first time offender, 22/23 years old at the time of incident and was an indigent helper (described as Conductor) of the truck from where narcotics were recovered, the sentence was reduced to the period already undergone. This Court in the cases of **Mangal Singh** and **Naresh Kumar** (supra) had also reduced the sentence to the period already undergone keeping in view the age of the appellant, neither misused the concession of bail nor involved in any other criminal case, the alleged recovery being of non-commercial quantity, appellants having faced the protracted trial.

12. The object of the criminal justice system is to reform the offenders and to make them see and follow the right path. However, the ancient penological approach was of custodial measure to curb crime. A balanced approach keeping in view the interests of the victim and accused and their families, release on admonition, probation, etc. is the way forward.

13. In view of the peculiarity of the facts and circumstances of the case and deriving strength from the afore-referred judgments, this Court is of the view that ends of justice would be adequately met if the sentence of the appellant is reduced to the extent of the period he has already undergone.

14. As a sequel thereto, the order of sentence dated 07.12.2004 passed by trial Court is modified and the sentence is ordered to be reduced to the period already undergone by him. However, the fine shall remain intact.
15. The present appeal is partly allowed.

(AMAN CHAUDHARY)
JUDGE

16.01.2024
ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No