

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

118

CRA-S-2207-SB-2004 (O&M)

Date of decision: 23.01.2024

Bharat Khanna

....Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rajneesh Malhotra, 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 05/06.10.2004, passed by the learned Judge Special Court, Jalandhar, whereby the appellant was convicted and sentenced to undergo rigorous imprisonment for one year and three months alongwith fine of Rs.2000/- and in default of payment of the same, to further undergo rigorous imprisonment for one month, for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act')

2. Shorn and short of unnecessary details, the facts culminating in the filing of the present appeal are that on 13.06.2001, when Inspector Gian Singh alongwith other police officials were on patrolling duty in connection with the checking of miscreants and suspected vehicles, they apprehended the accused along with two more persons possessing a jhola. After apprising them about their rights, search was conducted in the presence of a Gazetted Officer and recovery

of 50 gms. of opium was effected. The requisite samples were drawn and sealed. Ruqa was sent on the basis of form A after which an FIR was got 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.

5. The trial Court came to the conclusion that prosecution has proved its case beyond a shadow of reasonable doubt, and accordingly convicted and sentenced the appellant as mentioned in para No.1 above.

6. Hence, the present criminal appeal.

7. Learned counsel for the appellant, at the very outset, gives up the challenge to him conviction and prays for reducing the sentence to the period already undergone it being 10 months and 26 days on the ground that he is not involved in any other case under this Act; sole bread winner of the family; belongs to poor strata of society; aged about 47 years; recovery was non-commercial; never misused the concession of bail and has been facing the agony of protracted trial for the last 23 years. In support of his submissions, he relies on **S.K. Sakkar @ Mannan vs. State of West Bengal**, (2021) 4 SCC 483, **Issak Nabab Shah vs. State of Maharashtra**, (2020) SCC OnLine SC 1174 and the judgment passed by this Court in the case of **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 the sentence awarded to her 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.

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

10. Evidently, PW-3 Inspector Gian 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 PW4-DSP Ashok Bath. The Chemical Examiner, who after due examination, in his report, Ex.PH, opined it to be opium. The link evidence is also complete and the defence of being falsely implicated was found to be an afterthought. 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 **SK. Sakkar @ Mannan** (supra), 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** (supra), 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 06.10.2004 is modified to the aforesaid extent and as such, the present petition stands partly allowed.

(AMAN CHAUDHARY)
JUDGE

23.01.2024
ashok

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