

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

102+727

CRA-S-2470-SB-2006 (O&M)

Date of Decision: 10.05.2024

Karnail Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:- Mr. Rakesh Kumar, Advocate and
Mr. Tushar Sharma, Advocate for the appellant.

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

KIRTI SINGH, J.

CRM-17867-2024

The application is allowed as prayed for.

Medical record is taken on record.

MAIN CASE

Instant appeal has been directed against the judgment of conviction dated 10.11.2006 and order of sentence dated 13.11.2006 passed by Special Judge (under The Narcotic Drugs and Psychotropic Substances Act, 1985) (hereinafter referred to as 'NDPS Act') Jalandhar, whereby the appellant-accused had been held guilty for commission of offence punishable under Section 15 of NDPS Act and sentenced to undergo rigorous imprisonment for a period of 04 years and to pay fine of Rs.10,000/- with default stipulation.

Factual Matrix

2. In brief, the story of the prosecution is that on 25.05.2003, ASI Vijay Kumar along with other police officials was present in the area of village Jakkopur Kalan when he saw accused coming on the scooter who was carrying one gunny bag. He informed the accused that he was under suspicion that the accused was in possession of some intoxicant and his search was to be carried out, whether he wanted his search by a Gazetted Officer or by a Magistrate. The accused opted his search before a Gazetted Officer and memo in this respect was recorded. Thereafter, DSP Gurmail Singh arrived at the spot and apprised the accused regarding his legal right of search before him, any other Gazetted Officer or Magistrate but the accused reposed confidence in him and his consent memo was prepared. On conducting the search of gunny bag poppy husk was recovered and out of the said bag, two samples of 250 grams each were taken out and were prepared into parcels and the remaining contents of the gunny bag were found to be of 50 kgs. including the weight of jute bag. Hence, the total recovery comes out to be 50 kgs 500 grams including the weight of jute bag and after deducting the weight of empty jute bag, the recovery comes to be 49 kg 500 grams as normally the weight of gunny bag is 1 kg. Both the sample parcels and the gunny bag were sealed with the seal bearing letters VK and with seal of DSP bearing letters GS and sample seals were also prepared. The ruqa was sent to the police station on the basis of which formal FIR was recorded. On the next day, the accused along with the case property was produced before the Illaqa Magistrate. On completion of investigation and on receipt of report of Chemical Examiner, challan against the accused was presented in the

Court and copies of documents were supplied to the accused in compliance of Section 207 Cr.P.C.

3. From the perusal of the documents and after going through the report under Section 173 Cr.P.C., a *prima facie* case punishable under Section 15 of the NDPS Act was made out against the accused and charge was framed accordingly which was read over to him to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined PW1 ASI Vijay Kumar, PW2 SI Davinderjit, PW3 C. Raunki Ram, PW4 C. Narinder Singh, PW5 HC Prithipal Singh, PW6 DSP Gurmail Singh and PW7 HC Harjinder Singh.

5. After the conclusion of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. during which he was confronted with the circumstances outlined in the prosecution evidence to which he denied, asserting his innocence. He claimed that a fabricated case had been registered against him by Savinder Singh due to their strained relationship stemming from the lack of support from the accused towards him in the Samiti elections. On 25.05.2003 at 8:00 a.m. the police in the presence of Lakhbir Singh son of Piara Singh, a member of Panchayat Pipli, took him from his residence along with his scooter and implicated him in the case.

Submissions by learned counsel for the parties

6. 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 15 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 68 years old. He is suffering from various chronic diseases including renal failure and no purpose will be served by sending him behind bars after about 18 years. He has already mended his way of life and joined the mainstream of society. The appellant has already undergone 10 months and 23 days of actual custody out of sentence of 04 years awarded to him. Therefore, he prayed that the appeal be partly allowed and the sentence awarded to the appellant be reduced to the period already undergone.

7. 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

8. 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.

9. On perusal of judgment passed by learned 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.

10. So far as the sentence is concerned, the matter is related to the incident happened on 25.05.2003 about 21 years ago. Since no minimum sentence is provided under the provision, the request of reducing sentence seems to be proper. The sentence of 04 years awarded by the trial Court can be reduced to already undergone i.e. 10 months and 23 days due to the following reasons:

- (i) Appellant is now about 68 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 11.12.2006, however, he did not misuse the concession of same.
- (iii) The appellant has mended his way of life and joined the mainstream of the society.
- (iv) The appellant is suffering from complicated renal failure.

11. The Hon'ble Supreme Court in case titled as "**Umrao Singh v. State of Haryana, 1981 AIR (SC) 1723,**" observed as under:-

"After hearing counsel for the parties, we are satisfied that this is a case falling under the proviso of Section 16(1)(a)(i) and therefore, for adequate and special

reasons, the sentence lower than the minimum prescribed could be awarded. The High Court itself felt bound to award the minimum sentence but on merits was satisfied that if the legal position warranted the appellant could be given lesser sentence. We are in agreement with the view of the High Court. The appellant/ petitioner is aged about 70 and suffering from asthma illness and has a clean past record. Besides, the percentage of deficiency that was noticed in the milk sold by him was 0.4% in the fat contents.

2. Having regard to these facts, the expression of the view of the High Court was justified. We accordingly reduce the sentence of the appellant to the period already undergone. The sentence, of fine is maintained and we are informed that he has already paid the fine. Since he is already on bail, he should be released forthwith.

12. In the judgment of *Balvinder Singh v. State of Haryana 2012 (2) RCR (Criminal) 458*, this court has held that when 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.

Conclusion

13. Considering the case of accused, the mitigating circumstances as discussed above and in view of legal proposition settled by Hon'ble Supreme Court, the appeal is partly allowed. The impugned judgment of conviction dated 10.11.2006 is upheld, however, order of sentence dated 13.11.2006 is hereby modified and the sentence of the appellant is reduced to the period already undergone i.e. 10 months and 23 days and the fine as imposed by learned Trial Court is enhanced from

Rs.10,000/- to Rs.20,000/- and the same shall be paid within 02 months from the date of this judgment. The bail bonds of appellant-accused stand discharged.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

15. 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