REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 375 OF 2021

GURDEV SINGH .. Appellant

Versus

STATE OF PUNJAB .. Respondent

J U D G M E N T

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 28.11.2019 passed by the High Court of Punjab and Haryana at Chandigarh in CRA-DB No.311 of 2018 by which the High Court has dismissed the said appeal preferred by the appellant herein - original accused and has confirmed the judgment and order of conviction and sentence passed by the Learned Special Court

convicting the accused for the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred to as 'the Act") and sentenced the accused to undergo 15 years R.I. and to pay a fine of Rs.2 Lakhs and in default of payment of fine, to further undergo one year R.I., original accused has preferred the present appeal.

2. At the outset, it is required to be noted that vide earlier order dated 16.12.2020, this Court has refused to interfere with the conviction of the appellant for an offence punishable under Section 21 of the Act however, has issued notice confined to the question of sentence. Therefore, in the present appeal the question of sentence of 15 years R.I. with fine of Rs.2 Lakhs and in default to undergo further one year R.I. only is required to be considered.

3. Learned Counsel appearing on behalf of the appellant has vehemently submitted that the minimum punishment/sentence which is provided in Section 21 of the Act is 10 years. It is submitted that as per Section 32B of the Act where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under the Act, the Court may in addition to such factors, as it may deem fit, take into account the factors which are mentioned in Section 32B for imposing a

punishment higher than the term of imprisonment or amount of fine. It is submitted that therefore, by imposing the punishment higher than the minimum term of imprisonment i.e. in the present case 15 years R.I., the Court has to take into consideration the factors mentioned in Section 32B of the Act and has to assign the reasons while imposing the punishment higher than the minimum term of imprisonment. It is submitted that in the present case while imposing a punishment of 15 years R.I. which is admittedly higher than the minimum term of imprisonment of 10 years R.I., neither the Special Court nor the High Court have assigned any reasons taking into account the factors mentioned in Section 32B of the Act.

3.1 It is submitted that the appellant is the first time convict and is a poor person and was only a carrier. It is further submitted by Learned Counsel for the appellant – accused that in the present case the main supplier of the narcotic substance has not been apprehended/arrested and the appellant-accused being a carrier, sentence higher than the minimum provided under the Act is not warranted. It is submitted that factors contained in clauses (a) to (f) of Section 32B have not been considered by the Learned Special Court while imposing a sentence higher than the minimum sentence.

3.2 For the aforesaid, some of the observations made by this Court in para 23 of the decision in the case of ***Rafiq Qureshi vs. Narcotic Control Bureau, Eastern Zonal Unit***, (2019) 6 SCC 492 has been relied upon.

Learned Counsel appearing on behalf of the appellant – original accused has further submitted that in the case of ***Rafiq Qureshi*** (Supra), this Court has reduced the sentence of 16 years to 12 years in a case where the accused was found to be in possession of narcotic drugs which was much higher than the commercial quantity i.e. 609.6 gm, as per the analysis report.

3.3 Learned Counsel appearing on behalf of the appellant – accused has further submitted that this Hon'ble Court has time and again held that awarding of adequate sentence is a question of personal liberty protected by Article 21 of the Constitution of India and there is a requirement of giving due weightage to mitigating and aggravating circumstances. Reliance is placed on the decisions of this Court in the case of ***Soman vs. State of Kerala***, (2013) 11 SCC 382 and ***State of Haryana vs. Asha Devi***, (2015) 8 SCC 39. It is submitted that in the present case mitigating circumstances are that (i) appellant is a poor man and only bread winner of the family; (ii) Trial Court found that the

appellant should be dealt with leniently while considering the question of sentence; (iii) appellant was merely a carrier and the main accused Malkit Singh was never arrested and in fact no fruitful efforts were made to arrest him; (iv) the appellant is the first time convict under the Act and there is no pending case against the appellant under the Act and no special factors as stated in Section 32B (a) to (f) are present in the facts and circumstances of the present case. It is submitted that against the above mitigating circumstances, the aggravating circumstances are (i) that the offence in respect to commercial quantity under the Act and (ii) quantity of contraband recovered is four times the commercial quantity. It is submitted that therefore the mitigating circumstances are more in favour of the accused and therefore in the facts and circumstances of the case the punishment/sentence higher than the minimum provided under the Act is not warranted.

4. While opposing the present appeal, Learned Counsel appearing on behalf of the Respondent – State has vehemently submitted that in the facts and circumstances of the case neither the Learned Special Court nor the High Court have committed any error in imposing the punishment of 15 years R.I., which is higher than the minimum sentence provided under the Act. It is submitted that in the present

case and as per the case of prosecution which has been established and proved, the accused was selling the heroin. It is submitted that the accused was found to be in possession of 1 kg heroin which is much higher than the commercial quantity and four times greater than the minimum of the commercial quantity. It is submitted that 250 gm is a minimum commercial quantity and in the present case the accused was found to be in possession of 1 kg of heroin which is four times more/higher than the minimum commercial quantity provided under the Act. It is submitted that even in the case of ***Rafiq Qureshi*** (Supra) it is observed and held that the quantity of the narcotic substance recovered may be a relevant factor to impose punishment higher than the minimum and thus, quantity of substance with which accused is charged is a relevant factor, which can be taken into consideration while fixing quantum of punishment. It is further observed and held that a decision to impose a punishment higher than the minimum is not confined or limited to the factors as enumerated in clauses (a) to (f) of Section 32B and the Court's discretion to consider such factors as it may deem fit is not taken away or tinkered. It is submitted that in the aforesaid case though it was found that the court has not adverted to the factors mentioned in clauses (a) to (f) of Section 32B of the Act,

considering the fact that quantity of manufactured drug being much much higher than the minimum commercial quantity, this Court refused to interfere with the order passed by the Learned Special Court and the High Court imposing the sentence/imprisonment higher than the minimum imprisonment mentioned in Section 21 of the Act. It is submitted that in that case on facts the accused was found to be a carrier and therefore, this Court reduced the imprisonment from 16 years to 12 years R.I. It is submitted that in the present case the accused was found to be in possession of huge quantity of heroin i.e. 1 kg and was found to be selling narcotic substance/drugs, the sentence/imprisonment imposed by the Learned Trial Court confirmed by the High Court of 15 years R.I. with fine of Rs.2 Lakhs is not required to be interfered with.

5. Heard the Learned Counsel for the respective parties at length.

6. As observed hereinabove, in the present case the appellant – original accused was found to be in possession of 1 kg heroin which is four times more than the minimum of commercial quantity. 250 gm and above of Narcotic substance/drug is a commercial quantity as per the NDPS Act. The minimum sentence provided under Section 21 of the Act is 10 years R.I. So far as the commercial quantity is concerned, it

may be upto 20 years R.I. Therefore, the minimum sentence for commercial quantity shall not be less than 10 years, which may extend to 20 years with fine which shall not be less than Rs.1 lakh but which may extend to Rs.2 lakhs. Section 32B of the Act provides for factors to be taken into account for imposing higher than the minimum punishment. Section 32B of the Act reads as under:

> "[32B. Factors to be taken into account for imposing higher than the minimum punishment.— Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:—
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> (a) the use or threat of use of violence or arms by the offender;
> (b) the fact that the offender holds a public office and that he has taken advantage of that office in committing the offence;
> (c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence;
> (d) the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities;
> (e) the fact that the offender belongs to organised international or any other criminal group which is involved in the commission of the offence; and (f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence.]"

Therefore, while imposing a punishment higher than the minimum term of the imprisonment or an amount of fine, the Court may take into account the factors enumerated in Section 32B of the Act referred to hereinabove. However, it is required to be noted that Section 32B of the Act itself further provides that the Court may, in addition to such factors as it may deem fit, take into account the factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine as mentioned in Section 32B of the Act. Therefore, while imposing the punishment higher than the minimum term of imprisonment or amount of fine, the Court may take into account such factors as it may deem fit and also the factors enumerated/mentioned in Section 32B of the Act. Therefore, on fair reading of Section 32B of the Act, it cannot be said that while imposing a punishment higher than the minimum term of imprisonment or amount of fine, the Court has to consider only those factors which are mentioned/enumerated in Section 32B of the Act. Identical question came to be considered by this Court in the case of ***Rafiq Qureshi*** (Supra). While considering the statutory scheme mentioned in Section 32B of the Act, it is observed and held that Court may, where minimum term of punishment is prescribed, take into consideration “such factors as it may deem fit” for imposing a

punishment higher than the minimum term of imprisonment or fine and in addition take into account the factors for imposing a punishment higher than the minimum as enumerated in clauses (a) to (f) of Section 32B. It is further observed and held that quantity of the substance with which accused is charged is a relevant factor, which can be taken into consideration while fixing the quantum of punishment. In paragraph 15.1 to 16 and 18 it is observed and held as under:

> "15.1 The court may where minimum term of punishment is prescribed take into consideration such factors as it may deem fit for imposing a punishment higher than the minimum term of imprisonment or fine;
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> 15.2 In addition, take into account the factors for imposing a punishment higher than the minimum as enumerated in clause (a) to (f).
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> 16. The statutory scheme indicates that the decision to impose a punishment higher than the minimum is not confined or limited to the factors enumerated in clauses (a) to (f). The Courts discretion to consider such factors as it may deem fit is not taken away or tinkered. In a case a person is found in possession of a manufactured drug whose quantity is equivalent to commercial quantity, the punishment as per Section 21(c) has to be not less than ten years which may extend to twenty years. But suppose the quantity of manufactured drug is 20 time of the commercial quantity, it may be a relevant factor to impose punishment higher than minimum. Thus, quantity of substance with which an accused is charged is a relevant factor, which can be taken into consideration while fixing quantum of the punishment. Clauses (a) to (f) as enumerated in Section 32B do not enumerate any factor regarding quantity of substance as a factor

> for determining the punishment. In the event the Court takes into consideration the magnitude of quantity with regard to which an accused is convicted the said factor is relevant factor and the Court cannot be said to have committed an error when taking into consideration any such factor, higher than the minimum term of punishment is awarded.
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> … … …
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> 18. The specific words used in Section 32B that Court may, in addition to such factors as it may deem fit clearly indicates that Courts discretion to take such factor as it may deem fit is not fettered by factors which are enumerated in clauses (a) to (f) of Section 32B".

6.1 Therefore, quantity of substance would fall into "**such factors as it may deem fit**" and while exercising its discretion of imposing the sentence/imprisonment higher than the minimum, if the Court has taken into consideration such factor of larger/higher quantity of substance, it cannot be said that the Court has committed an error. The Court has a wide discretion to impose the sentence/imprisonment ranging between 10 years to 20 years and while imposing such sentence/imprisonment in addition, the Court may also take into consideration other factors as enumerated in Section 32B (a) to (f). Therefore, while imposing a punishment higher than the minimum sentence, if the Court has considered such factor as it may deem fit other than the factors

enumerated in Section 32B (a) to (f), the High Court has to only consider whether “such factor” is a relevant factor or not.

6.2 Applying the aforesaid principles of law to the facts of the case on hand, it is required to be considered whether in the facts and circumstances of the case the sentence of 15 years R.I. with fine of Rs.2 Lakhs imposed by the Learned Special Court and confirmed by the High Court require interference by this Court? While considering the request made on behalf of the accused to award lesser punishment and to take lenient view while sentencing him, the Special Court in fact has taken into consideration the relevant facts/factors while not imposing the maximum punishment of 20 years R.I. and awarding the sentence of 15 years R.I. Therefore, as such, it cannot be said that the Special Court has not at all applied its mind while awarding the sentence.

6.3 Submission on behalf of the accused that the main supplier has not been apprehended/arrested and the appellant is a carrier only cannot be a ground to interfere with the sentence imposed by the Learned Special Court confirmed by the High Court. In most of the cases the main supplier, who may be from outside country may not be apprehended and/or arrested. Once the accused is found to be in

illegal possession of the narcotic substance/drugs, if in the circumstances so warranted, can be awarded the sentence higher than the minimum prescribed/provided under the Act.

6.4 In the present case the appellant - accused was found to be in possession of 1 kg heroin and he sold it to the informant. Therefore, he cannot be said to be a mere carrier. In given case, even a carrier who is having the knowledge that he is carrying with him narcotic substance/drugs and is found to be with huge commercial quantity of narcotic substance/drugs can be awarded the sentence higher than the minimum sentence provided under the Act. In the present case, as observed hereinabove, the accused was found to be in possession of 1 kg heroin and the minimum commercial quantity is 250 gm. Therefore, the accused was found to be in possession of 4 times higher than the minimum commercial quantity and therefore, the sentence imposed by the Learned Special Court imposing the sentence of 15 years R.I. with fine of Rs.2 lakhs, confirmed by the High Court is not required to be interfered with by this Court. It cannot be said that while imposing such punishment the Court has taken into consideration any irrelevant factors.

7. Now so far as the submission on behalf of the accused that awarding of adequate sentence is question of personal liberty protected by Article 21 of the Constitution of India and there is requirement of giving due weightage to the mitigating and aggravating circumstances and in the present case the mitigating circumstances in favour of the accused are more than the aggravating circumstances and therefore the punishment higher than the minimum provided under the Act is not justified and/or warranted is concerned, at the outset, it is required to be noted that the appellant is held to be guilty for the offence under Section 21 of the Act and found to be in possession of 1 kg heroin which is four times more/higher than the commercial quantity. At this stage, the statement of objects and reasons for enactment of NDPS Act are required to be referred to. Before the NDPS Act 1965 was enacted, the statutory control over narcotic drugs was exercised in India through number of Central and State enactments viz. — The Opium Act, 1857, (b) the Opium Act, 1878 and (c) The Dangerous Drugs Act, 1930. However, with the passage of time and developments in the field of illicit drug traffic and drug abuse at national and international level it was noticed and found that (i) The scheme of penalties under the aforesaid ACTS was not sufficiently deterrent to meet the challenge of well-

organized gangs of smugglers; (ii) The country has for the last few years been increasingly facing the problem of transit traffic of drugs coming mainly from the neighboring countries and destined mainly to Western countries; (iii) During recent years new drugs of addiction which have come to be known as psychotropic substances have appeared on the scene and posed serious problems to national governments. Therefore with a view to overcome the aforestated deficiencies the NDPS Act, 1985 came to be enacted. That thereafter to check the menace of dangerous drugs flooding the market, Section 37 of the Act came to be amended and it has been provided that the accused of an offence under the Act shall not be released on bail during trial unless the mandatory conditions provided in Section 37 are satisfied.

While considering the submission on behalf of the accused on mitigating and aggravating circumstances and the request to take lenient view and not to impose the punishment higher than the minimum sentence provided under the Act it should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young

victims who are vulnerable; it cause deleterious effects and deadly impact on the society; they are hazard to the society. Organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances shall lay to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, it has a deadly impact on the society as a whole. Therefore, while awarding the sentence/punishment in case of NDPS Act, the interest of the society as a whole is also required to be taken in consideration. Therefore, while striking balance between the mitigating and aggravating circumstances, public interest, impact on the society as a whole will always be tilt in favour of the suitable higher punishment. Therefore, merely because the accused is a poor man and/or a carrier and/or is a sole bread earner cannot be such mitigating circumstances in favour of the accused while awarding the sentence/punishment in the case of NDPS Act. Even otherwise, in the present case, the Special Court, as observed hereinabove has taken into consideration the submission on behalf of the accused that he is a poor person; that he is sole bread earner, that it

is his first offence, while not imposing the maximum punishment of 20 years R.I and imposing the punishment of 15 years R.I. only.

8. In view of the above and for the reasons stated hereinabove, there is no substance in the present appeal and the same deserves to be dismissed and is accordingly dismissed.

……J.
[Dr Dhananjaya Y Chandrachud]

……J.
[M R Shah]

New Delhi,
April 6, 2021