

---

**(2019) 08 RAJ CK 0166**  
**In the Rajasthan High Court**  
**Case No : Criminal Appeal No. 635 Of 2012**

|                                  |            |
|----------------------------------|------------|
| Mohd.Jubaan @ Mohd.nawaj @ Jaanu | APPELLANT  |
| Vs                               |            |
| State Of Rajasthan               | RESPONDENT |

---

**Date of Decision :** 29-08-2019

**Acts Referred:**

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8, 21, 50, 60  
Code Of Criminal Procedure, 1973 — Section 313

**Citation :** (2019) 08 RAJ CK 0166

**Hon'ble Judges :** Manoj Kumar Garg, J

**Bench :** Single Bench

**Advocate :** J.S. Khichi, Anees Bhurat

**Final Decision :** Partly Allowed

---

## Judgement

Instant appeal has been filed by the appellant challenging the judgment dated 27.06.2012 passed by the learned Special Judge, N.D.P.S Cases, Hanumangarh, in Criminal Sessions Case No.22/2009, by which the learned trial court convicted and sentenced the appellant for offence under Section 8/21 N.D.P.S. Act to undergo one year rigorous imprisonment and to pay a fine of Rs.10,000/-; in default of payment of fine, to further undergo three months additional rigorous imprisonment.

Briefly stated facts of the case are that on 31.05.2009 at 4:30 PM, the S.H.O. of Police Station Sadar, Hanumangarh received a secret information that Mohammed Jubaan @ Mohd.Nawaz @ Jaanu S/o Sardar Khan is involving in the business of selling smack, who would be carrying smack in his Tempo No.RJ-31 P 0563 and going towards Jandawali to Hanumangarh Junction. The police party put a blockade to prevent the accused and at 6:20 PM, the police saw a tempo coming from the side of Jandawali. Upon seeing the police party, the driver of the tempo tried to escape. The police caught hold him and upon enquiry, he disclosed his name as Mohammed Jubaan. He was served a notice under Section 50 NDPS Act and upon search, 6 gms. smack was found from his pocket. The

police registered a case and started investigation. After investigation, the police filed challan against the appellant for offence under Section 8/21, 60 NDPS Act. Thereafter, charges of the case were framed against the accused-appellant, who denied the charges and claimed trial.

During the course of trial, the prosecution examined 11 witnesses and various documents were also exhibited. Thereafter, statement of appellant under section 313 Cr.P.C was recorded. No witness was examined on the defence side.

After considering the material available on record, the learned trial court convicted the appellant/accused for offence under Section 8/21 NDPS Act vide order dated 27.06.2012 and sentenced him, as stated above. Hence, this criminal appeal.

At the threshold, learned counsel for the appellant does not want to challenge the finding of conviction but submits that the accused-appellant has already undergone about four months imprisonment out of total imprisonment of one year and also suffered mental agony and trauma since 2009, therefore, the substantive sentence awarded to the appellant for the aforesaid offence may be reduced to the period already undergone by him. In support of this contention, learned counsel for the appellant relied upon judgment of this Court in the case of Mohammad Ali v. State of Rajasthan reported in 2013(4) CJ(Cri.) (Raj.) 1914, Niyamat Ali Nemu v. State of Rajasthan reported in 2013(4) CJ(Cri.) (Raj.) 1915, Sher Singh vs. State of Rajasthan reported in 2016(1) WLN 156 (Raj.)

Per contra, the learned Public Prosecutor has supported the judgment and order passed by the court below and submitted there is neither any occasion to interfere with the sentence awarded to the accused-appellant nor any compassion or sympathy is called for in the said case.

I have perused the evidence of the prosecution as well as defence and the judgments passed by both the courts below. Indisputably, the recovered contraband is below commercial quantity. The incident relates back to the year 2009 and the appellant has so far undergone a period of about four months imprisonment out of total one year imprisonment, so also suffered the agony and trauma of protracted trial. As per material available on record, it appears that the recovery in question was appellant's first offence. Thus, looking at the over-all circumstances, this Court is of the opinion that ends of justice would be met if the substantive sentence of imprisonment awarded by the trial court for offence under Section 8/21 NDPS Act is reduced to the period of imprisonment already undergone by the appellant while maintaining the amount of fine in the sum of Rs. 10,000/-.

Accordingly, the criminal appeal is partly allowed. While maintaining the appellant's conviction for offence under Section 8/21 NDPS Act, the sentence awarded to him is hereby reduced to the period already undergone by him. However, the amount of fine is hereby maintained. In default of payment of fine, the appellant shall undergo three months' rigorous imprisonment. Two month's

time is granted to deposit the fine before the trial court. Appellant is on bail. His bail bonds stand discharged.

The record of trial court be sent back forthwith.