

CRA-S-1475-SB-2008

**1017 IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**

CRA-S-1475-SB-2008
Decided on:30.04.2025

Rajinder Kumar

.... Appellant

versus

State of Punjab

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Sadhvi Bharti, Advocate (Amicus Curiae)
for the appellant.

Mr. Rishabh Singla, AAG, Punjab.

Harpreet Singh Brar, J. (Oral)

1. The prayer in the present appeal is to set aside the judgment of conviction and order of sentence dated 01.08.2008 passed by learned Special Judge, Ferozepur whereby the appellant was convicted and sentenced for the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), in the case stemming from FIR No.49 dated 01.04.2002 registered under Section 21 of NDPS Act at Police Station Sadar Abohar.

2. The appellant was sentenced for keeping in his possession 20+20 grams of smack, as 20 grams smack was recovered at the spot and 20 grams smack was recovered at the instance of his disclosure statement.

The appellant was sentenced as under:

Offence	Sentence
Section 21 of NDPS Act	Rigorous imprisonment for a period of one year and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo RI for two months



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3. Learned Amicus Curiae *inter alia* contends that as per the case of the prosecution, the appellant ran away from the spot leaving behind the cycle and the contraband material. Later, he was recognized by HC Bakhshish Singh, who was a member of the raiding party. The entire story of the prosecution is unnatural and improbable. Further, the test identification parade to establish the identity of the appellant as a person, who had thrown away the contraband, was not conducted. Further, chemical examination of the contraband was not conducted and as such, neither the identity of the appellant was established nor the recovery of contraband from the conscious possession of the appellant was proved in any manner. As per the custody certificate, the appellant has undergone a period of 04 months and 28 days and is not involved in any other case.

4. *Per contra*, learned State counsel opposes the prayer of the appellant as the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, he does not deserve any leniency.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellant was convicted for being in possession of 40 grams of smack, which falls under the purview of Section 21 of NDPS Act. As per the custody certificate, the appellant has undergone a period of 04 months and 28 days out of total sentence of one year in the instant case and is not involved in any other case. Since there is no minimum punishment prescribed under Section 21 of NDPS Act for the non-commercial quantity this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the appellant is reduced to the period already undergone by him.

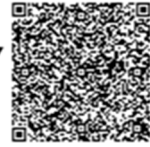


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6. In ***Deo Narain Mandal vs. State of U.P. (2004) 7 SCC 257***, the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient.

7. Further, the Hon'ble Supreme Court in ***Ravada Sasikala vs. State of AP AIR 2017 SC 1166***, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

8. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, the FIR (*supra*) was lodged on 01.04.2002 and the appellant has been suffering the agony of trial for the last more than 23 years. Since his conviction, he has grown into law-abiding citizen and desires to live a peaceful life.



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9. Therefore, in view of the discussion above, present appeal is disposed of in the following terms:-

(i) The judgment dated 01.08.2008 passed by the learned Special Judge, Ferozepur is upheld.

(ii) The order of sentence dated 01.08.2008 is modified to the extent that the sentence of rigorous imprisonment for one year and fine of Rs.5,000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

10. The High Court Legal Services Authority is directed to pay remuneration to learned *Amicus Curiae* as per rules.

11. Pending miscellaneous applications, if any, shall also stand disposed of.

30.04.2025
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(HARPREET SINGH BRAR)
JUDGE

Whether speaking/non-speaking?
Whether reportable?

Yes/No
Yes/No