



**1370 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-S-2479-SB-2010
Date of decision: 15.05.2025**

MALKIAT SINGH

...APPELLANT

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Poorvi Sharma, Advocate as *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 04.10.2010 passed by learned Judge, Special Court, Barnala, whereby, the appellant was convicted and sentenced for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act'), in the case stemming from FIR No.169 dated 07.08.2007 under Section 15 of the NDPS Act at Police Station City, Barnala.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of two years and to pay fine of Rs.1,000/- and in default of payment of fine, to further undergo RI for 06 months.

3. Brief facts of the case are that on 07.08.2007, when ASI Baljit Singh along with other police officials was going from main road, Barnala



towards Dhanaula and reached near *kacha* path of outskirts of Dhanaula Khurd, Canal Bridge, the appellant was seen putting something from the loaded plastic bag into the *lifafas* (polythenes) by sitting under the shade of Bohar tree. Poppy Husk was visible from the mouth of plastic bag. Hence, the appellant was apprehended. Upon search of plastic bag, 25 kgs of Poppy Husk was recovered. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae* for the appellant *inter alia* contends that there is total non-compliance of Section 50 of the NDPS Act. Further, during the course of investigation or at the time of alleged recovery, no independent witness was joined, although, the recovery was made from a thoroughfare place. As such, the conviction of the appellant is only on the basis of testimonies of official witnesses. Furthermore, there is unexplained delay in sending the sample to the office of Chemical Examiner. Learned counsel submits that neither the CFSL from was prepared at the spot nor the same was produced before the MHC. She further submits that no explanation has been forthcoming with regard to the memos, which were admittedly prepared prior to the registration of the FIR (*supra*). Lastly, she submits that the appellant has already undergone a total custody period of 02 months and 03 days, out of total sentence of two years, in the instant case and he is not involved in any other case.

5. *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 as such, he does not deserve any leniency.



6. 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 25 kgs of Poppy Husk, which falls under the purview of Section 15 of NDPS Act. As per his custody certificate, he has already undergone a period of 02 months and 03 days out of total sentence of two years, in the instant case. Since there is no minimum punishment prescribed under Section 15 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.

7. 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.

8. 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.

9. 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 07.08.2007 and the appellant has been suffering the agony of trial for last more than 17 years. Since his conviction, he has grown into a law-abiding citizen and desires to live a peaceful life.

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

(i) The judgment dated 04.10.2010 passed by the learned Judge, Special Court, Barnala is upheld.

(ii) The order of sentence dated 04.10.2010 is modified to the extent that the sentence of rigorous imprisonment for two years and fine along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

(HARPREET SINGH BRAR)
JUDGE

May 15, 2025
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(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No