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

CRA-S-1285-SB-2007
Date of decision: 24.03.2025

Nishan SinghAppellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Satnam Singh Gill, Advocate
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 04.07.2007 passed by learned Judge, Special Court, Patiala, whereby, the appellant was convicted and sentenced for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act'), in the case stemming from FIR No.41 dated 08.05.2002, under Section 18 of the NDPS Act at Police Station Ghagga.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of three years and to pay fine of Rs.2,500/- and in default of payment of fine, to further undergo rigorous imprisonment for two months.

3. Brief facts of the case are that on 08.05.2002, SI Tejinder Singh along with other police officials was on patrolling duty at 'T' Point Boota Singh Wala, Ghagga main road Samana and was holding *naka* there. They saw the



appellant coming carrying a bag in his right hand and when SI Tejinder Singh stopped the accused/appellant, he tried to run away but nabbed by the police party. The appellant was apprehended with 01 Kg of Opium in the presence of one Surinder Singh i.e. the independent witness and two samples of 10 grams each were drawn from the bag and then the same was sent to the chemical examiner. Subsequently, FIR (*supra*) was registered under Section 18 of the NDPS Act.

4. Learned counsel for the appellant submits that the learned Court below has fallen into grave error in convicting the appellant, as his guilt has not been proved beyond reasonable doubt. It is contended that the mandatory provisions under the NDPS Act have not been followed and also there is non-compliance of Section 50 of the NDPS Act. The linking evidence is also missing in the present case. Further, the statement of the accused/appellant had not been properly recorded under Section 313 of Cr.P.C. Further, there was also an unexplained delay in sending the sample of the alleged contraband to the FSL which creates doubt in the case set up by the prosecution. The alleged independent witness Surinder Singh has not been examined. He further contends that he is not assailing the impugned judgment of conviction dated 04.07.2007 on merits and restricts his prayer to modification of the order of quantum of sentence, to that of the sentence already undergone by the appellant, as he has already undergone a period of 08 months and 10 days in custody and he is involved in one more case under the NDPS Act.

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 01 kg of Opium, i.e. intermediate quantity, attracting the offence of Section 18 NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate, he is not involved in any other case and has already undergone an actual sentence of 08 months and 10 days out of total sentence of 03 years, in the instant case. Since there is no minimum punishment prescribed under Section 18 NDPS Act, 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



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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 08.05.2002 and the appellant has been suffering the agony of trial for last more than 22 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 04.07.2007 passed by the learned Judge, Special Court, Patiala, is upheld.

(ii) The order of sentence dated 04.07.2007 is modified to the extent that the sentence of rigorous imprisonment for 03 years with fine along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

(HARPREET SINGH BRAR)
JUDGE

24.03.2025

Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No