



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

**CRA-S-2097-SB-2006
Date of decision: 24.03.2025**

BALBIR SINGH @ PILLU

...APPELLANT

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Gurpreet Kaur, Advocate
for the appellant (*amicus curiae*).

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 06.09.2006 passed by learned Judge, Special Court, Bathinda, whereby the appellant was convicted and sentenced for the offence punishable under Section 18(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act'), in the case stemming from FIR No.8 dated 28.01.2003, under Section 18 of the NDPS Act at Police Station Raman.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 18(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of six months and to pay fine of Rs.4,000/- and in default of payment of fine, to further undergo RI for 01 month.



3. Brief facts of the case are that on 28.01.2003, SHO Jaswinder Pal along with a public man Major Singh was holding *nakabandi* on a culvert of canal minor situated on *kutchra* passage of village Seikhu. At about 9:15 AM, he saw appellant along with Gurmeet Singh and Labh Singh on a vehicle and a polythene bag containing some material was lying between Labh Singh and the appellant. On suspicion, they were apprehended. Upon search of polythene bag, 500 grams of Opium was recovered. Subsequently, FIR (*supra*) was registered under Section 18 of the NDPS Act.

4. Learned *amicus curiae* for the appellant *inter alia* contends that prosecution has miserably failed to prove the conscious and exclusive possession of the appellant over the allegedly recovered contraband. Admittedly, contraband was recovered from the back seat of the car, however, it was never produced during the course of trial. Further, neither the CFSL form was filled at the spot nor the same was deposited in the *malkhana* along with the case property. As such, link evidence is clearly missing. She submits that there is no corroboration to the case set up by the prosecution. She further submits that the seal after use, was handed over to Major Singh, who was joined as independent witness, however, the said Major Singh was not examined by the prosecution. As such, convicting the appellant, on the basis of testimonies of official witnesses, is not safe. Lastly, she submits that the appellant has already undergone total custody period of 03 months and 27 days, out of total sentence of six months.

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. He further submits that the appellant was also convicted in another case bearing FIR No.93 dated 31.03.2008 under the provisions of Section 61 of Excise Act at Police Station City Barnala.

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 500 grams of Opium, which falls under the purview of Section 18 NDPS Act. As per his custody certificate, he has already undergone an actual sentence of 03 months and 27 days out of total sentence of 06 months, in the instant case. Since there is no minimum punishment prescribed under Section 18 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 28.01.2003 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 06.09.2006 passed by the learned Judge, Special Court, Bathinda is upheld.

(ii) The order of sentence of even date i.e. 06.09.2006 is modified to the extent that the sentence of rigorous imprisonment for 06 months and fine of Rs.4,000/- 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.

March 24, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |