



691

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

**CRA-S-2050-SB-2007 (O&M)
Date of decision: 28.03.2025**

Kala Ram @ Vaisakhi

... Appellant

Vs.

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harshjit Singh, Advocate (*Amicus Curiae*)
for the appellant.

Mr. Harkesh Kumar, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This appeal has been preferred against the judgment of conviction and the order of sentence dated 05.10.2007 passed by learned Additional Sessions Judge, Fatehabad, in FIR No.111 dated 21.02.2003 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station City Fatehabad.

2. The appellant was convicted and sentenced under Section 15(b) of NDPS Act for having in possession 5 kgs of poppy husk and was ordered to undergo rigorous imprisonment for a period of 06 months and to pay a fine of Rs.2,500/- along with default mechanism.

2025:PHHC:043114



3. Learned *Amicus Curiae* appearing for the appellant, *inter alia*, contends that entire case of the prosecution is based upon the testimonies of official witnesses. The alleged recovery was effected from a Chowk, where there is heavy flow of traffic and despite that, no independent witness was joined by the police party. Further, there is complete contrast between the testimonies of the Investigating Officer/PW6 Rajesh Kumar and PW5 Balkar Singh with regard to shape of seal. Furthermore, the mandatory provisions of NDPS Act have not been complied with. He further submits that the appellant has already undergone actual sentence of 02 months and 06 days and is not involved in any other criminal activity.

4. *Per contra*, learned State counsel opposes the prayer of the appellant, as learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, he does not deserve any leniency. He produces the custody certificate dated 27.03.2025 of the appellant in the Court, which is taken on record.

5. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the appellant was convicted for being in possession of 5 kgs of poppy husk, i.e. intermediate quantity, attracting the offence of Section 15(b) of NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate dated 27.03.2025, the appellant is not involved in any other case and has already undergone an actual sentence of 02 months and 06 days, out



of 06 months R.I. awarded by learned trial Court, in the instant case. Since there is no minimum punishment prescribed under Section 15(b) of 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.

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 realize 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 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 21.02.2003 and the appellant has been suffering the agony of trial for last more than 22 years. Since his conviction, the appellant has grown into a law-abiding citizen and desires to live a peaceful life.

9. Accordingly, 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.

10. Consequently, the present appeal is disposed of and the judgment of conviction dated 05.10.2007 passed by learned trial Court is upheld, however, the order of sentence dated 05.10.2007 is modified to the extent that the sentence of rigorous imprisonment of 06 months and to pay a fine of Rs.2,500/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

11. All the pending miscellaneous application(s), if any, shall also stand disposed of.



12. The High Court Legal Services Committee is directed to pay the remuneration to learned *Amicus Curiae*, as per relevant Rules/Orders.

28.03.2025
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No