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

CRA-S-1662-SB-2008 (O&M)

Date of Decision: 01.05.2025

KALI

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jasdeep Singh Salooja, Advocate as *Amicus Curiae*
for the appellant.

Mr. Rishabh Singla, AAG Punjab.

Harpreet Singh Brar, J. (Oral)

1. Present appeal has been preferred by the appellant against the judgment of conviction and order on quantum of sentence dated 03.09.2008 passed by learned Judge, Special Court, Barnala vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
15 of NDPS Act	Rigorous imprisonment for six months	Rs. 500/-	Rigorous imprisonment for 15 days

2. Brief facts of the case are that on 28.09.2007, ASI Swaran Singh along with other police officials were on patrolling duty at Patti Sekhwan Chowk, Barnala, where Jagraj Singh son of Karam Singh met the police party. When ASI Swaran Singh was engrossed in talk with him at about 1.10 PM from the side of Patti Sekhwan, accused-petitioner Kali was seen coming carrying a plastic bag in her right hand. On seeing the police party, she at once turned back and started walking. On suspicion, ASI Swaran Singh with the help of other police officials, apprehended her and verified her name and address. Search of the appellant-accused along with her belongings was conducted. Thereafter, on

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search of plastic bag, carried by the appellant, poppy husk was recovered. Out of the poppy husk, two samples each of 250 grams were separated and remaining on weightment was found to be 4 kilograms. All the parcels were sealed. FIR(*supra*) was registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act').

3. Learned *Amicus Curiae* for the appellant *inter alia* contends that the prosecution story does not inspire confidence and it is full of contradictions. Further, FSL form was neither filled up at the spot, nor deposited with the *malkhana* along with the contraband. The arrest and search of the appellant was not made in the presence of any lady police official. Investigating Officer has acted against the mandatory provisions contained in Section 50(4) of NDPS Act and the story of having home guard lady official at the time of personal search of the appellant is clearly an afterthought only to fill the compliance of the provisions and there is non-compliance of mandatory provisions of Sections 42 and 57 of NDPS Act. Further, the appellant is not involved in any other case and has undergone a period of 01 month and 06 days of custody out of total sentence of 06 months awarded to her.

4. Per contra, learned State counsel opposes the prayer of the appellant on the ground that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, the appellant 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 4.500 kilograms of poppy husk, attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. Appellant has already undergone custody of 01 month and 06 days

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out of total sentence of 06 months, in the instant case. Since there is no minimum punishment prescribed under Section 15 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 her.

6. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of 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, a two Judge Bench of the Hon'ble Supreme Court in **Ravada Sasikala v. 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.



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8. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the said judgment is based on correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 28.09.2007 and the appellant has been suffering the agony of trial for last more than 17 years. Since her conviction, the appellant has reformed into a law-abiding citizen and intends to live a peaceful life.

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

(i) The judgment dated 03.09.2008 passed by the learned Judge, Special Court, Barnala is upheld.

(ii) The order of sentence dated 03.09.2008 is modified to the extent that the sentence of rigorous imprisonment for 06 months along with fine of Rs. 500/- with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by her.

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

11. High Court Legal Services Committee is directed to pay remuneration to the *Amicus Curiae*, as per rules.

(HARPREET SINGH BRAR)
JUDGE

01.05.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No