

2025-PHHC-056052



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

CRR-1089-2009(O&M)

Date of Decision:-30.04.2025

Sanjiv Kumar @ Kauwa.

.....Petitioner.

Vs.

State of Punjab.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Rajesh Bhatheja, Advocate Amicus Curiae for the
Petitioner.

Mr. Prabhdeep Singh Dhaliwal, Assistant Advocate General,
Punjab.

JASJIT SINGH BEDI, J.(ORAL)

The present revision petition has been filed impugning the judgment dated 24.03.2009 passed by Judge, Special Court, Patiala whereby the appeal filed against the judgment of conviction and order of sentence dated 11.05.2005 passed by Principal Magistrate, Juvenile Board, Ludhiana has been dismissed.

2. The FIR in the present case came to be registered on 17.03.2001. The judgment of conviction was passed on 11.05.2005 by the Principal Magistrate, Juvenile Board, Ludhiana. The Appeal filed against the order of conviction was dismissed on 24.03.2009 by the Judge, Special Court, Patiala. The instant revision petition was filed on 30.04.2009 and has come up for final hearing now i.e. after a period of more than 24 years

from the date of registration of the FIR.

3. In brief the prosecution case is that on 17-3-2001, ASI Ajit Singh sent a ruqa and got the case registered under Section 20 of NDPS Act. The facts of the case are that when ASI Ajit Singh alongwith HC Prem Singh, HC Balwinder Singh no.413, C.Harish Kumar 1416, C. Gurmit Singh no.362, C-Jarnail Singh no.2985, SPO Veersingh no.745, PHG Gurdev Singh no.30088 and also ASI Bhupinder Rai, Incharge, P.P.Bahadurgarh, riding on the official vehicle Allywn Nissan bearing PB-11-A-5986 being driven by C.Ram Lakhan no.2082, for patrolling and to nab bad elements were going from V.Kauli to V. Mohabbat Pur then at about 6-00 p.m. when they reached near Gurudwara Sri Ishar- Shar Sahib in the area of Mohabbat Pur, from the opposite side two men were been coming on a scooter. On seeing the police party, they tried to turn back and on suspicion, they were chased. They were asked to stop, but after throwing the scooter they ran towards the fields. Then the police party nabbed both the accused. ASI Ajit Singh with the help of HC Balwinder Singh no.1113, C. Gurmit Singh no.362, C. Jarnail Singh no.2985, PHG Gurdev Singh arrested accused Sanjiv Kumar alias Kauwa s/o Som Nath alias Babbi, r/o Bajakhana School near Fire Brigade, Patiala. On checking, it was found that some contraband was tied around his waist. The accused was asked by ASI Ajit Singh that he wanted to search his person and if he so desires, some Gazetted Officer or Magistrate could be called, However, he reposed faith in the police and agreed to get his search conducted from the police. In the meanwhile, Kashmir Singh s/o late Mr. Balwant Singh, Jat, r/o V. Buddan Pur, Gurdwara Nim Sahib also reached there, who was briefed about the facts and was joined in the police party. The wireless message was flashed and on receiving a telephonic call, Bhupinder Jit Singh Virk, DSP, Rural, Patiala

reached at the spot. On reaching there, DSP Bhupinderjit Singh Virk disclosed his identity to accused Sanjiv Kumar and to Amrik Singh s/o Baru Ram, who was already arrested by ASI Bhupinder Rai, separately. Dy.S.P. Bhupinderjit Singh asked both the accused, whether they intended to get their person searched from him or some Gazetted officer, but both of them reposed faith in the Dy S.P. and offered themselves for search. ASI Ajit Singh searched the person of accused Sanjiv Kumar and recovered Sulfa wrapped in two polythene bags tied with his waist. The Sulfa in polythene bags was made into one parcel. Two samples of 100 grams each were separated and made into a parcel and remaining sulfa came to be 1 Kg.800 grams, which was put into a box and made into a parcel. All the three parcels were sealed with the seals of JS of ASI Ajit Singh and BS of Dy. S.P. After use the seals were handed over to PW Kashmir Singh. The case property and sample duly sealed were taken into possession vide separate recovery memo alongwith piece of cloth with which the sulfa was tied with his waist. The accused could not produce any licence to keep the sulfa in his possession, thereby Sanjiv Kumar committed an offence u/s 20 of NDPS Act. Hence, the ruqa was sent through C. Harish Kumar no.1416 to the police station for registration of the case against accused Sanjiv Kumar alias Kauwa and the case was accordingly registered. ASI Ajit Singh prepared the site plan. Statement of witnesses were recorded. Special reports were sent to the Illaqa Magistrate. The scooter was also taken into possession vide separate recovery memo. The sample was sent to the chemical examiner and on receipt of the report of the chemical examiner and after completion of investigations the challan was put in the court of Shri Inderjit Kaushik, Judge Special Court, Patiala.

4. The accused was charged under Section 20 of the NDPS Act,

for keeping in his possession 2 Kgs Charas without any permit or licence to which the accused pleaded not guilty and claimed trial.

5. The prosecution examined PW1 Sh. Bhupinderjit Singh DSP Election Cell, Chandigarh, PW2 HC Fakir Chand no.368, PS Sadar, Patiala, PW3 HC Sohan Singh no.1149 CIA Staff, Patiala, PW-4 Inspector Sewa Singh PS Bhadson, PW5 HC Balwinder Singh no.1113, PP Bahadurgarh (PS Sadar Patiala), PW6 ASI Ajit Singh, PP Basantpur (P.S. Sadar Rajpura), gave up PW ASI Ajit Singh, C. Lakhwinder Singh and C.Harish Kumar as unnecessary and also gave up PW Kashmir Singh as having been won over by the accused. Thereafter, the APP tendered the report of chemical examiner Ex.PM and closed the prosecution evidence.

6. When examined under section 313 Cr.P.C. the accused denied all the allegations appearing in the prosecution evidence against him, claimed to be innocent and contended that he had been falsely implicated in the case. In his defence the accused examined DW-1 Nand Kishore, DW-2 Sahib Singh MHC no.2350 and gave up DW Moti Lal as unnecessary.

7. During the trial before the Special Judge, it was revealed that the accused was a Juvenile as he had moved an application for referring his case to the Juvenile Board, Ludhiana.

8. Then on 8-1-04, the Judge, Special Court, Patiala found on an enquiry that the accused seemed to be a juvenile as per the Juvenile Justice (Care and Protection of Children) Act, 2000. So, the case was referred to the Principal Magistrate, Juvenile Justice Board, Luahiana.

9. On receiving the case, it was registered and was adjourned for defence evidence. However, the accused had closed his defence evidence without leading any more.

10. Based on the evidence led, the accused/petitioners came to be

convicted and sentenced by the court of Principal Magistrate, Juvenile Board, Ludhiana vide judgment and order of sentence dated 11.05.2005 as under:-

Offences under Section	Sentence	Fine	RI/SI in default of payment of fine
Section 20 of the NDPS Act	SI for 02 Years in a special home	-	-

All the aforesaid sentences were ordered to run concurrently.

11. The accused/petitioners preferred an appeal which came to be dismissed by the Court of Judge Special Court, Patiala, vide judgment dated 24.03.2009.

12. The aforementioned judgments are under challenge in the present revision petition.

13. During the pendency of the instant revision petition, the sentence of the accused/petitioner was suspended vide order dated 27.05.2009.

14. The Amicus Curiae for the accused/petitioner contends that the judgment of conviction is based on conjectures and surmises. The witnesses are discrepant in material particulars. The mandatory provisions of the Act regarding search and seizure particularly Section 50 have been violated. No independent witness has been examined to support the prosecution case. He thus contends that the impugned judgments are liable to be set aside and the accused be acquitted of the charges framed against him. In the alternative, he prays that in case this court was to come to the conclusion that the conviction of the accused was to be upheld, then his sentence be reduced to the period already undergone by him as the occurrence took place in the year 2001, the matter has come up for hearing now after a gap of more than 24 years and he was a juvenile on the date of the occurrence his date of birth being 21.01.1985.

15. The Counsel for the State on the other hand has placed on record the custody certificate dated 28.04.2025. He contends that the prosecution witnesses have deposed consistently as to how the search and seizure came to be effected. The mandatory provisions of the Act including Section 50 have been duly complied with. No independent prosecution witness was required to be examined as the accused has not established any prior enmity between the official witnesses and him. He thus contends that the present petition was liable to be dismissed.

16. I have heard counsel for the parties.

17. The prosecution has examined PW Jit Singh ASI and PW DSP Bhupinderjit Singh to prove the factum of compliance of Section 50 of the Act. PW Jit Singh ASI has proved that the accused was apprehended on suspicion. He was given the option as to whether he wants to be searched in the presence of Gazetted Officer or Magistrate. He vide his dissent memo EX.PF clearly stated that he did not want to be get searched from the police officials i.e. the IO etc. This dissent statement is proved in the testimony of the IO Jit Singh as well as in the statement of HC Balwinder Singh. This shows that the option was given to the accused, as to whether he wanted to be searched from a Gazetted Officer or a Magistrate, In accordance to his wishes, again his consent memo was recorded vide memo EXPA, which showed that the option was given by the DSP (Gazetted Officer) as to whether he was ready to get his personal search conducted from him or whether he wanted the search to be conducted from a Magistrate. EX.PA was proved in the testimony of PW Bhupinder Singh, as well as PW Jit Singh. In EX.PA Sanjiv Kumar has given his consent for being searched by the Gazetted Officer i.e. the DSP. Thus, both the consent memo EXPA and dissent memo EXPF clearly showed that the option was given to the accused

for getting his personal search conducted in the presence of a Magistrate or a Gazetted Officer.

18. The argument that no independent witness was joined at the time of the alleged recovery thereby vitiating the same, is without any merit. At the time when recovery was effected from the accused, PW Kashmir Singh had actively participated as well as witnessed the recovery effected from the accused. He was given the seal by the IO because the recovery was effected and the samples were sealed in his presence. However during the trial Kashmir Singh was summoned to support the case of the prosecution but he failed to appear to depose. In this situation, the prosecution was left with no alternative but to give him up as being won over. It is a matter of common prudence that independent witness although support the case of the prosecution at the time of recovery but later they are pressurized by the family of the accused or their own families not to depose under the fear of retaliation at a later stage.

19. Even otherwise no animosity on the part of the official witnesses was established by the accused in his defence. There is nothing on record to show that the police officials were nursing a grudge against the accused, from prior to this occurrence. Moreover, the prosecution has proved the allegations against the accused with the assistance of PW6 ASI Jit Singh and PW5 HC Balwinder. They had apprehended him while in possession of 2 kg of sulfa. Such a heavy quantity of narcotics cannot be planted by the police. The testimony of recovery witnesses as well as the testimony of DSP Bhupinderjit Singh Singh clearly showed that the accused was caught red-handed while in possession of the narcotics. The police had duly joined one independent witness, but he being won over by the accused, does not falsify the case of the prosecution which is otherwise cogent and consistent. The

recovery witnesses have duly proved the recovery of narcotics. Thus non-examining of independent witness does not cast any doubt regarding the prosecution version.

20. In view of the aforementioned discussion, I find no merit in the present petition and the same stands dismissed.

21. As regards the imposition of sentence, the legislature has consistently made it clear that a juvenile delinquent must only be remanded to a special home, which is evidenced by the fact that both Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter 'the Act of 2000') as well Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter 'the Act of 2015') contain specific provision to that effect.

Section 15(1)(g) of the Act of 2000 reads as follows:

15. Order that may be passed regarding juvenile.-

(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,-

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(g) make an order directing the juvenile to be sent to a special home,-

(i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;

(ii) in case of any other juvenile for the period until he ceases to be a juvenile:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

While Section 18(1)(g) of the Act of 2015 reads as follows:

18. Orders regarding child found to be in conflict with law.—

(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence,

specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

xxx xxx xxx

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home"

22. As such, it is the mandate of law to remand a juvenile offender, tried under the Act of 2000 or the Act of 2015, to a special home only, on establishment of his guilt. It is trite law that if a certain method is prescribed by law, it must be followed to accomplish that specific task, necessarily forbidding the use of other methods. Reliance in this regard can be placed on the judgment rendered by the Hon'ble Supreme Court in ***Dharani Sugars and Chemicals Ltd. vs. Union of India and others (2019) 5 SCC 480***. Therefore, since a special law occupies the field and categorically prescribes for a juvenile delinquent to only be sent to a special home, he cannot be remanded to any other correctional facilities. However, due to the time consumed in adjudicating upon the revision petition filed by him, the petitioner, originally convicted as a juvenile, has now attained majority. Therefore, he cannot be ordered to undergo the sentence imposed upon him in a special home or a regular penitentiary. As such, this Court is of the considered opinion that ends of justice will be met if the sentence imposed upon the petitioner is reduced to that already undergone by him.

23. A two Judge bench of the Hon'ble Supreme Court in ***Mahesh vs. State of Rajasthan and others 2018(2) R.C.R.(Criminal) 687***, dealt with a similar matter wherein the accused was convicted as a juvenile but had attained majority at the time of decision of the appeal. Taking into account the efflux of time and the fact that the accused was now a middle aged man

who cannot be sent to a remand home, the following observations were made:

“9. The present is a case where the accused appellants though juveniles on the date of commission of the alleged crime are, as on today, middle aged persons. The accused appellant - Mahesh in Criminal Appeal arising out of Special Leave Petition (Criminal) No.2934 of 2015 had undergone the custody for a period of nearly one year whereas the accused appellant - Arjun in Criminal Appeal arising out of Special Leave Petition (Criminal) No.5370 of 2015 had suffered custody for about eight (08) months. The maximum sentence, as already noted, is three years. Having regard to the long efflux of time we are of the view that it will not be necessary, in the facts of the present cases, to cause a remand of the matter to the Juvenile Justice Board for a decision on the quantum of sentence for the reason even if such a remand is made and the Juvenile Justice Board comes to a decision that in addition to the period of custody suffered by the accused appellants they need to suffer a further period of custody, such custody can only be in a remand home or a protection home to which places the accused appellants, because of their age as on today, cannot be sent.

10. On the contrary, **having regard to the period of custody suffered; the age of the accused appellants as on date; the efflux of time since the date of occurrence and all other relevant facts and circumstances we are of the view that while maintaining the conviction of the accused appellants the sentence imposed should be modified to one of the period undergone. We order accordingly.**” (emphasis added)

24. Reliance in this regard can also be placed upon the judgments rendered by the Hon’ble Supreme Court in **Babban Rai and another vs. State of Bihar (2007)13 SCC 88, Pradeep Kumar vs. State of U.P. 1994 AIR SC 104** and this Court in **Sanjay alias Kala vs. State of Haryana 2011(2) R.C.R.(Criminal) 899, Rajesh Kumar vs. State of Haryana 2011(1)**

R.C.R. (Criminal) 830 and **Rohit vs. State of Haryana in CRR-56-2017** decided on 31.10.2017.

25. In **Deo Narain Mandal v. State 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. Further, a two Judge Bench of 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.

26. In the instant case FIR was registered on 17.03.2001 and the instant revision challenging the conviction has come up for hearing now after more than 24 years of the registration of the FIR. Accordingly, this court is of the opinion that it would be in the interest of justice, if the

sentence awarded to the petitioner is reduced to the period already undergone by him i.e. 03 months and 21 days.

27. The present revision petition stands disposed of in the above terms.

**(JASJIT SINGH BEDI)
JUDGE**

April 30, 2025

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>