



CRA-S-3067-SB-2010 (O&M)

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1387 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-3067-SB-2010 (O&M)
Date of Decision: 26.05.2025

CHARANJIT @ KALA

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Manisha Singh, 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 17.09.2010 passed by learned Judge, Special Court, Jalandhar 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 three years	Rs. 500/-	Rigorous imprisonment for six months

2. Brief facts of the case are that SI Avtar Singh alongwith other police officials were checking suspected persons in the area of village Narangpur and when the police party was about to reach village Kotla Heran, two youngsters riding a scooter were sighted. On the basis of suspicion, they were signalled to stop. The scooter driver disclosed his name as Charanjit @ Kala, while pillion rider introduced himself as Lovepreet @ Sukha. Both of them had kept a *bora* (jute bag) containing some narcotic. On the basis of suspicion, search of the said *bora* was conducted, upon which poppy husk was recovered. Out of the total quantity of poppy husk, two samples of 250 grams

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each were separated and the remaining poppy husk was found to be 29.500 kilograms. All the parcels were sealed and FIR 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 there is complete non-compliance of Sections 42, 50 and 57 of NDPS Act. Further, the conscious possession of the appellant over the alleged contraband was not proved as the appellant was driving the scooter, whereas the co-accused, who was the pillion rider, was holding the jute bag, containing 30 kilograms of poppy husk. Further, the prosecution has not proved the ownership of the scooter and the representative sample was sent to the office of chemical examiner after a delay of 18 days as the recovery was effected on 21.10.2008 and the sample was sent to the office of chemical examiner on 07.11.2008 and in the absence of any explanation for the same, there is every likelihood of tempering with the sample and no independent witness was joined at the time of alleged recovery or during the course of investigation, The appellant has undergone actual custody of 08 months and 29 days out of total sentence of 03 years awarded to him.

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 the appellant is also involved in other cases as well. As such, he 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 30 kilograms of poppy husk, attracting the offence

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under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. Perusal of custody certificate of the appellant indicates that he has already undergone custody of 08 months and 29 days out of total sentence of 03 years, 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 him.

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

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strike a balance between the efficacy of law and the chances of reformation of the accused.

8. Further, the primary consideration in matters where the petitioner/appellant is involved in other NDPS cases ought to be the severity of the offence. Moreover, Co-ordinate benches of this Court have deemed it appropriate to reduce the sentence imposed upon the accused to be the custody already undergone by them, in spite of their involvement in other cases pertaining to the NDPS Act in *Pritam Singh @ Preeti vs. State of Punjab* in **CRA-S-1769-SB-2010** decided on 03.04.2025, *Ram Lal vs. State of Haryana* in **CRA-S-986-SB-2005** decided on 11.05.2018, *Raj Pal vs. State of Haryana* in **CRA-S-68-SB-2005** decided on 28.04.2023, *Raj Pal vs. State of Haryana* in **CRA-S-34-SB-2005** decided on 28.04.2023 and *Gurmail Singh and others vs. State of Punjab* in **CRA-S-1976-SB-2007** decided on 28.03.2025

9. 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 21.10.2008 and the appellant has been suffering the agony of trial for last more than 16 years. Since his conviction, the appellant has reformed into a law-abiding citizen and intends 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 17.09.2010 passed by the learned Judge, special Court, Jalandhar is upheld.
- (ii) The order of sentence dated 17.09.2010 is modified to the extent that the sentence of rigorous imprisonment for 03 years along with fine of Rs. 500/- with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.



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

12. High Court Legal Services Authority is directed to pay remuneration to learned *Amicus Curiae* as per rules.

(HARPREET SINGH BRAR)
JUDGE

26.05.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No