



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

CRA-S-1544-SB-2009 (O&M)
Date of decision: 21.04.2025

Gurmail SinghAppellant

Versus

State of Hayana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rakesh Nagpal, Advocate
for the appellant.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the present appeal is to set aside the judgment of conviction dated 04.06.2009 and order of sentence dated 05.06.2009 passed by learned Sessions Judge, Sirsa, whereby, the appellant was convicted and sentenced for the offence punishable under Section 15 of the NDPS Act in the case stemming from FIR No.9 dated 09.01.2005 under Sections 15/16 of the NDPS Act at Police Station Ellenabad.

2. The appellant was convicted for keeping in possession 40 kg of choora post and sentenced as mentioned below:

Offence	Sentence
Section 15 of NDPS Act	Rigorous imprisonment for a period of 02 years and to pay fine of Rs.10,000/- and in default of payment of fine, to further undergo simple imprisonment for one month.

3. Learned counsel for the appellant *inter alia* contends that the learned Court below has fallen into grave error in convicting the appellant, as his guilt has not been proved beyond reasonable doubt. The appellant has been falsely implicated in the present case. He was not apprehended at the scene of



the alleged incident, and the purported recovery was made from a vehicle bearing registration number DBG-7918, which does not belong to the appellant. The registered owner of the said vehicle, Ram Chander, appeared as PW-7 and stated that he had sold the vehicle to one Amarjit Singh. However, Amarjit Singh has not been produced before the Court during the proceedings. Furthermore, the independent witness cited by the prosecution did not support the prosecution's case and was declared hostile. Additionally, the link evidence is also missing in the present case and also there are material discrepancies and contradictions in the statements of the prosecution witnesses. Furthermore, there is non compliance of Section 57 of the NDPS Act and the mandatory provisions have not been followed. Lastly, the appellant has already undergone a period of 04 months and 02 days in custody.

4. *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. He further submits that the appellant is involved in two more cases under the NDPS Act and as such, he does not deserve any leniency. However, he could not controvert the fact that in the said cases, the quantity recovered from the appellant falls within the ambit of small quantity.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellant was convicted under Section 15 of the NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate, has already undergone an actual sentence of 04 months and 02 days



out of total sentence of 02 years, in the instant case. Since there is no minimum punishment prescribed under under Section 15 of the 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 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.



8. 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 09.01.2005 and the appellant has been suffering the agony of trial for last more than 20 years. Since his conviction, he has grown into a law-abiding citizen and desires 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 04.06.2009 passed by the learned Sessions Judge, Sirsa, is upheld.

(ii) The order of sentence dated 05.06.2009 is modified to the extent that the sentence of rigorous imprisonment for 02 years and fine along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

(HARPREET SINGH BRAR)
JUDGE

21.04.2025

Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No