



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

**CRA-S-43-SB-2008
Date of decision: 03.04.2025**

KULWINDER SINGH @ KINDA

...APPELLANT

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. H.S. Rakhra, Advocate for the appellant.

Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the present appeal is to set aside the judgment of conviction dated 19.12.2007 and order of sentence dated 20.12.2007 passed by learned Judge, Special Court, Bathinda whereby the appellant was convicted and sentenced for the offence punishable under Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), in the case stemming from FIR No.46 dated 31.01.2004 registered under Section 15 of NDPS Act at Police Station Kotwali, District Bathinda.

2. The appellant was sentenced for keeping in his possession 5.700 kgs of Poppy Husk, as mentioned below :

Offence	Sentence
Section 15 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of nine months and to pay fine of Rs.2,000/- and in default of payment of fine, to further undergo RI for 02 months.



3. Learned Counsel for the appellant submits that he is not assailing the impugned judgment of conviction dated 19.12.2007 passed by learned Judge, Special Court, Bathinda on merits and restricts his prayer to modification of the order on quantum of sentence dated 20.12.2007 to that of sentence already undergone by the appellant. As per the custody certificate, the appellant has undergone a period of 03 months and 16 days and he is not involved in any other case.

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 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 5.700 kgs of Poppy Husk, which falls under the purview of Section 15 NDPS Act. As per the custody certificate, the appellant has undergone a period of 03 months and 16 days, out of total sentence of nine months and he is not involved in any other case. Since there is no minimum punishment prescribed under Section 15 NDPS Act, for the non-commercial quantity 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 31.01.2004 and the appellant has been suffering the agony of trial for last more than 21 years. Since his conviction, he has grown into law-abiding citizen and desires to live a peaceful life.

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



(i) The judgment dated 19.12.2007 passed by the learned Judge, Special Court, Bathinda is upheld.

(ii) The order of sentence dated 20.12.2007 is modified to the extent that the sentence of rigorous imprisonment for nine months and fine of Rs.2,000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

April 03, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |