



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

**CRA-S-1642-SB-2007
Date of decision: 26.03.2025**

NIRMAL SINGH

...APPELLANT

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Vini, Advocate as *amicus curiae* for the appellant.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the present appeal is to set aside the judgment of conviction and order of sentence dated 08.08.2007 passed by learned Judge, Special Court, Barnala, whereby the appellant was convicted and sentenced for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act'), in case stemming from FIR No.33 dated 12.04.2006, under Section 15 of the NDPS Act at Police Station Bhadaur.
2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of nine months and to pay fine of Rs.500/- and in default of payment of fine, to further undergo RI for 02 months.

3. Brief facts of the case are that on 12.04.2006, SI Iqbal Singh along with other police officials was on patrolling and they were going from



village Majhuke Ram Garh towards village Talewal. When the police party was little short of canal bridge of village Deepgarh, at about 9:00 AM, appellant, carrying something heavy in the plastic bag on head, was seen coming. On seeing the police party, he got perplexed and turned towards the left side of canal bridge. On suspicion, he was apprehended. Upon search of plastic bag, 12 kgs of Poppy Husk was recovered. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae* for the appellant *inter alia* contends that provisions of Section 57 of NDPS Act have been violated, which is fatal to the case of prosecution. Further, the link evidence is missing and there is no evidence available on record about the fact that sample was deposited in the *malkhana* and with the chemical examiner. Furthermore, the case of the prosecution hinges upon the testimonies of official witnesses. She submits that independent witness Mithu Khan, who was joined during the course of investigation, was not examined by the prosecution, rather he appeared as defence witness. Lastly, she submits that the appellant has undergone a period of 03 months and 04 days, out of his total sentence of 09 months.

5. *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.

6. 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 12 kgs of Poppy Husk, which falls under the purview of Section 15 NDPS Act, for which no minimum sentence has been prescribed. As per the order dated 01.10.2007 passed by this Court, when sentence of the appellant was suspended, he has undergone a period of 03 months and 04 days, out of his total sentence of 09 months. 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.

7. 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.

8. 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.

9. 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 12.04.2006 and the appellant has been suffering the agony of trial for last about 19 years. Since his conviction, he has grown into a law-abiding citizen and desires 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 08.08.2007 passed by the learned Judge, Special Court, Barnala is upheld.

(ii) The order of sentence of even date i.e. 08.08.2007 is modified to the extent that the sentence of rigorous imprisonment for nine months and fine of Rs.500/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

March 26, 2025
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(HARPREET SINGH BRAR)
JUDGE

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