



556 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1151-SB-2007

Date of decision: 20.03.2025

SURJIT SINGH

...APPELLANT

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Roopse Sharma, *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 24.05.2007 passed by learned Judge, Special Court, Tarn Taran, District Tarn Taran 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 the case stemming from FIR No.172 dated 19.10.2003, under Section 15 of the NDPS Act at Police Station Bhikhiwind.

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 two years and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

3. Brief facts of the case are that on 19.10.2003, ASI Jagtar Singh along with police companions was going from village Ghurak Wind to village Kacha Pacca in connection with patrolling. When they reached at bridge of



canal minor in the area of village Kacha Pacca, appellant having a *jhola* plastic hanging on his left shoulder, was coming from front side. On seeing the police, he perplexed and stopped. On the basis of suspicion, he was apprehended and upon search of *jhola* plastic bag, 5 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 there is non-compliance of mandatory provisions of Section 50 of NDPS Act and the appellant was not made aware of his legal rights to get his search conducted in the presence of Gazetted Officer or Magistrate. He submits that the independent witness, who was joined during the course of investigation, was not examined by the prosecution. Further, the entire case of the prosecution is based upon the testimonies of official witnesses and their statements are discrepant to the material points and are not worthy of any reliance. Lastly, he submits that the appellant has already undergone actual custody period of 05 months and 21 days in custody and is not involved in any other criminal case.

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 5 kgs. of Poppy Husk, which falls under the purview of Section 15 NDPS Act. As per his custody certificate, he is not



involved in any other case and has already undergone an actual sentence of 05 months and 21 days out of total sentence of 02 years, in the instant 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.

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 19.10.2003 and the appellant has been suffering the agony of trial for last more than 21 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, present appeal is disposed of in the following terms:-

(i) The judgment dated 24.05.2007 passed by the learned Judge, Special Court, Tarn Taran is upheld.

(ii) The order of sentence of even date i.e. 24.05.2007 is modified to the extent that the sentence of rigorous imprisonment for 02 years and fine of Rs.5,000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

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

(HARPREET SINGH BRAR)
JUDGE

March 20, 2025
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(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No