

CRA-S-1282-SB-2008

**985 IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**

CRA-S-1282-SB-2008
Decided on:29.04.2025

Malkiat Singh Appellant

versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sukhdeep S. Chhatwal, Advocate (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 12.07.2008 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 referred to as 'NDPS Act'), in the case stemming from FIR No.13 dated 08.04.2007 registered under Section 15 of NDPS Act at Police Station Barnala.

2. The appellant was sentenced for keeping in his possession 9 kgs of poppy husk, as mentioned below:

Offence	Sentence
Section 15 of NDPS Act	Rigorous imprisonment for a period of six months and to pay fine of Rs.500/- and in default of payment of fine, to further undergo RI for one month.



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3. Brief facts of the case are that on 08.04.2007, a police party headed by ASI Sampuran Singh was on patrolling duty. When the police party reached about half km ahead of village Bhadalwad, they saw the appellant coming, who was carrying a plastic bag on his head. On seeing the police party, he became perplexed and turned towards the fields towards his left side. However, on the basis of suspicion, he was apprehended with 9 Kgs of Poppy Husk in the presence of ASI Sampuran Singh and two samples of 250 grams were drawn from the bag and then sent to the chemical examiner for its examination and subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae* submits that the learned Court below has fallen into grave error in convicting the appellant, as his guilt has not been proved beyond reasonable doubt. He contends that the entire case of the prosecution is based on the testimonies of official witnesses without any corroboration. Further, despite the fact that the recovery was made from the busy place, no independent witness was joined in the investigation. Lots of discrepancies were there in the prosecution version as search was not conducted in the presence of any Gazetted Officer or Magistrate. He further contends that the mandatory provisions of the NDPS Act have not been followed in the present case. Lastly, he submits that the appellant has already undergone a period of 01 month in custody.

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. 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.

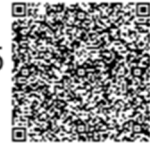


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6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellant was convicted for being in possession of 09 kgs of poppy husk, which fall under the purview of Section 15 of NDPS Act. As per the custody certificate, the appellant has undergone a period of 01 month out of total sentence of six months in the instant case. Although learned State counsel submits that the appellant is involved in two more cases registered under the NDPS Act, however, he could not controvert the fact that quantity recovered in those cases do not fall under the ambit of commercial quantity. Since there is no minimum punishment prescribed under Section 15 of 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



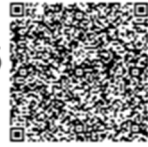
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realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances 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. Further, the primary consideration in matters where the appellant is involved in other NDPS cases ought to be the severity of the offence. Moreover, the Coordinate Benches of this Court have deemed it appropriate to reduce the sentence imposed upon the accused to be the custody already undergone by him, in spite of his 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.

10. 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 08.04.2007 and the appellant has been suffering the agony of trial for the last more than 18 years. Since his conviction, he has grown into law-abiding citizen and desires to live a peaceful life.

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



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(i) The judgment dated 12.07.2008 passed by the learned Judge, Special Court, Barnala is upheld.

(ii) The order of sentence dated 12.07.2008 is modified to the extent that the sentence of rigorous imprisonment for six 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.

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

13. Pending miscellaneous applications, if any, shall also stand disposed of.

29.04.2025
sonia

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/non-speaking?
Whether reportable?

Yes/No
Yes/No