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

CRA-S-91-SB-2007
Date of decision: 07.03.2025

Sukhjinder Singh alias Sukha .....Appellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Arora, Advocate
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 13.01.2007 passed by learned Judge, Special Court, Jalandhar, whereby the appellant was convicted and sentenced for the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act'), in the case stemming from FIR No.179 dated 13.11.2002, under Section 21 of the NDPS Act at Police Station Division No.8, Jalandhar.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of **06 months** and to pay fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

3. Brief facts of the case are that on 13.11.2002, a police party was on patrolling duty at PAP 'T' Point, Jalandhar and received a secret information that the accused/appellant is standing in Lama Pind Chowk and he is engaged in the business of selling smack. When the police party conducted a raid, the

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appellant was apprehended with 20 grams of smack and one sample was drawn from the bag. The sample of 05 gram was then sent to the chemical examiner. Subsequently, FIR *(supra)* was registered under Section 21 of the NDPS Act.

4. Learned counsel for the appellant submits that the there is no compliance of provision under Section 42 of the NDPS Act. The FIR *(supra)* was registered on the basis of secret information, however, neither it has been reduced into writing nor the senior officials have been informed. He further contends that he is not assailing the impugned judgment of conviction dated 13.01.2007 on merits and restricts his prayer to modification of the order of quantum of sentence, to that of the sentence already undergone by the appellant, as he has already undergone a period of 01 month and 11 days and is not involved in any other criminal activity.

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 20 gram of smack, i.e. intermediate quantity, attracting the offence of Section 21 NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate, he is not involved in any other case and has already undergone an actual sentence of 01 month and 11 days out of total sentence of 06 months, in the instant case. Since there is no minimum punishment prescribed under Section 21 NDPS Act, this Court is of

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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

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lodged on 13.11.2002 and the appellant has been suffering the agony of trial for last more than 22 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 13.01.2007 passed by the learned Judge, Special Court, Jalandhar, is upheld.

(ii) The order of sentence dated 13.01.2007 is modified to the extent that the sentence of rigorous imprisonment for 06 months along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

(iii) The sentence of fine of Rs.1,000/- imposed upon the appellant by the learned Court below shall remain intact. The appellant is directed to deposit the said amount in the trial Court within one month from the date of receipt of certified copy of this order. In case of default of payment of fine, the appellant shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

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

(HARPREET SINGH BRAR)
JUDGE

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

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