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

CRA-S-1028-SB-2011 (O&M)

Date of decision: 16.05.2025

Gurcharan Singh

.....Appellant

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE H.S. GREWAL

Present: Mr. Ashok K. Khunger, Advocate
for the appellant.

Mr. Manvir Singh Toor, AAG, Punjab.

H.S. GREWAL J. (Oral)

Feeling aggrieved by the judgment of conviction and order of sentence dated 04.02.2010 passed by the learned Judge, Special Court, Ferozpur in case FIR No.96 dated 03.05.2003 under Sections 15 of Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter 'the NDPS Act'), registered at Police Station Sadar, Abohar, the appellant has come up before this Court by way of filing the present appeal.

2. The case of the prosecution is that on 03.05.2003 SI Pushpinder Singh along with other police officials on Government jeep were going for patrolling and checking of suspected person from village Bahawalbassi to Village Chakra. When the police party reached at a distance of about 2 kms from the said village, two persons were seen coming on foot from the opposite side. On seeing the police party, they tried to run away from the spot after throwing the gunny bags containing something which were lifted by them on their respective heads. Out of them one person fell in the pucca water course. He



received injury on his right elbow. The person who fell in the pucca water course disclosed his name as Gurcharan Singh and the other person disclosed his name as Ninder Singh @ Nandi. SI Pushpinder Singh told both the accused that he had suspicion that there were some intoxicant substance in the gunny bags thrown by them and the search of the same was to be conducted and they had the legal right to get conducted the search of the bags in the presence of a Magistrate or a gazetted Officer. Both of them reposed confidence in him. Then SI prepared the consent memo of accused Gurcharan Singh which was thumb marked by him and witnessed by ASI Kashmir Singh and HC Mahesh Singh (Ex.P1) and of Ninder Singh (Ex.P2) which was thumb marked by him and attested by the above said witnesses. Then SI Pushpinder Singh conducted the search of the gunny bag which was recovered from the possession of accused Gurcharan Singh from which poppy husk was recovered. Out of the recovered poppy husk one sample of 250 grams was separate and the remaining poppy husk on weighment was found to be 34.750 Kgs. The sample as well as the remaining poppy husk were converted into separate parcels. Then SI Pushpinder Singh conducted the search of gunny bag recovered from the possession of accused Ninder Singh from which poppy husk was recovered. Out of the recovered poppy husk one sample of 250 grams was separated and the remaining poppy husk on weighment was found to be 34.750 Kgs.

3. Vide order dated 04.02.2010, the appellant has been convicted under Section 15 of the NDPS Act, 1985 and has been sentenced to under rigorous imprisonment for a period of 04 years and a fine of Rs.30,000/- and further in default of payment of fine, to undergo rigorous imprisonment for a period of one year.



4. Learned counsel for the appellant contends that he is not assailing the impugned judgment of conviction dated 04.02.2010 on merits and restricts his prayer qua modification of the order on quantum of sentence, to the period as already undergone by the appellant, as he has already undergone a period of 03 years 02 months and 15 days. He further prays that since the FIR in question pertains to the year 2003, a lenient view may be taken while passing an order/judgment by this Court.

5. On the other hand, learned State counsel opposes the prayer of the appellant by way of filing of custody certificate dated 15.05.2025 and states that the learned Court below has passed a well reasoned judgment based on correct appreciation of evidence available on record.

6. I have heard learned counsel for the parties and have gone through the material placed on record.

7. The appellant has been convicted for having in possession of 35 kgs of poppy husk which falls in the category of non-commercial quantity attracting the offence of Section 15 of the NDPS Act, for which no minimum punishment has been prescribed. Moreover, the FIR in the present case pertains to the year 2003 and he has already faced the rigors of the trial for more than 20 years.

8. Hon'ble the Supreme Court in "*Deo Narain Mandal Vs. State of UP*", (2004) 7 SCC 257, has held 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, the 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.

9. Further, a two-Judge Bench of the Hon'ble Supreme Court in *Ravada Sasikala Vs. State of AP, AIR 2017 SC 1166*, has held 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 conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

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, learned counsel for the appellant has not assailed the judgment of conviction on merits, rather restricted the prayer only qua modification of quantum of sentence to that of the sentence already undergone by the appellant.

11. Since the FIR in the present case was registered on 04.02.2010 and the appellant has been suffering the agony of trial since the last more than 20 years. Since there is no minimum punishment prescribed under Section 15 of the NDPS Act and keeping in view the fact the FIR is of the year 2003 and the appellant has faced the rigors of the trial for more than a period 20 years and



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therefore, while taking a lenient view, 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.

12. In view of above, the present appeal is **disposed of** by upholding the judgment of conviction dated 04.02.2010 passed by the learned Judge, Special Court, Ferozpur, however the order of sentence dated 04.02.2010 is modified to the extent that the sentence of rigorous imprisonment for a period of 03 years, 02 months and 15 days awarded to the appellant is reduced to the period of sentence already undergone by him. However, fine is enhanced to Rs.5000/- over and above the fine so imposed vide impugned order of sentence.

16th May, 2025

Sonia Puri

**(H.S. GREWAL)
JUDGE**

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