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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRA-S-1011-SB-2007 (O&M)
Date of Decision: 21.03.2025**

KIRPAL CHAND @ NIKKA

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Dushyant Rana, *Amicus Curiae*
for the appellant.

Mr. Rishabh Singla, AAG Punjab.

Harpreet Singh Brar, J. (Oral)

1. Present appeal has been preferred by the appellant against the judgment of conviction and order on quantum of sentence dated 14.05.2007 passed by learned Judge, Special Court, Hoshiarpur vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
15 of NDPS Act	Rigorous imprisonment for two years	Rs. 5,000/-	Rigorous imprisonment for three months

2. Brief facts of the case are that on 15.05.2005, ASI Harbhinder Kumar along with other police officials were proceeding on the Government Vehicle bearing registration No. PB 12-G-9047, in connection with patrolling duty. When the police party was at a short distance from metalled road of Denowal Khurd, one contessa car from the side of Denowal Khurd was lying stopped for entering the main road and the driver of the said car was looking at the police party suddenly came out of the car and sat down towards left side in the fields on the pretext to answer a call of nature, who was apprehended on the basis of suspicion. On asking, the said person disclosed his name as Kirpal

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Chand (appellant herein). On the basis of suspicion, search of the appellant-accused along with his car was conducted. Thereafter, on search of car of the accused-appellant, one plastic bag of white colour, whose mouth was tied with rope, was recovered from the front seat of the car, from which poppy husk was recovered. Out of the bulk of poppy husk, two samples each of 250 grams were separated and remainder was found to be 9 KG 500 grams. All the parcels were sealed. FIR(*supra*) was registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act').

3. Learned *Amicus Curiae* for the appellant *inter alia* contends that prosecution has failed to prove the conscious possession of the contraband upon the appellant and further there is non-compliance of Section 50 of NDPS Act. The offer given to the appellant was a partial offer and no independent witness was joined at the time of effecting the alleged recovery, although there was ample opportunity to join some independent witness from the public. Further the prosecution has failed to prove the ownership of alleged vehicle from which alleged recovery has been effected. Appellant has no concern with the vehicle in question. There are various shortcomings and discrepancies in the statements of material witnesses and the learned trial Court has ignored all these facts and the link evidence is clearly missing. Lastly, he submits that the appellant has already undergone a period of more than 04 months and 03 days out of total sentence of 02 years imposed upon him.

4. Per contra, learned State counsel opposes the prayer of the appellant on the ground that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as per custody certificate, the appellant was also convicted in one more case under NDPS Act as such, the appellant does not deserve any leniency.

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5. 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 10 kilograms of poppy husk, attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate, he has already undergone an actual sentence of 04 months and 03 days out of total sentence of 02 years, in the instant case. Since there is no minimum punishment prescribed under Section 15 of NDPS Act, 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.

6. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of 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.

7. Further, a two Judge Bench of the Hon'ble Supreme Court in **Ravada Sasikala v. 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



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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.

8. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the said judgment is based on correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 15.05.2005 and the appellant has been suffering the agony of trial for last more than 19 years.

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

(i) The judgment dated 14.05.2007 passed by the learned Judge, Special Court, Hoshiarpur is upheld.

(ii) The order of sentence dated 14.05.2007 is modified to the extent that the sentence of rigorous imprisonment for two years along with fine of Rs. 5,000/- with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

11. High Court Legal Services Committee is directed to pay remuneration to the *Amicus Curiae*, as per rules.

(HARPREET SINGH BRAR)
JUDGE

21.03.2025

Ajay Goswami

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*