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

**CRA-S-2768-SB-2010 (O&M)  
Date of Decision: 04.04.2025**

RAJESH KUMAR

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Lipika, Advocate as *Amicus Curiae*  
for the appellant.

Mr. Sandeep Kumar, DAG Punjab.

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**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 08.11.2010 passed by learned Judge, Special Court, Sri Muktsar Sahib vide which the appellant has been convicted and sentenced as mentioned below:

<b>Offence under Section</b>	<b>Sentence</b>	<b>Fine</b>	<b>Sentence in default of payment of fine</b>
18 of NDPS Act	Rigorous imprisonment for 3½ years	Rs. 20,000/-	Rigorous imprisonment for nine months

2. Brief facts of the case are that on 07.04.2003, ASI Krishan Kumar along with other police officials, in a private vehicle, were present on GT Road leading from Malout to Dabwali on the bridge of canal minor in the area of village of Mahuana. In the meanwhile, a car bearing registration No. DDC 847 came there from the side of Dabwali and was stopped on being signalled by the IO. The person, who was driving the said car, alighted from the car and tried to run away, but he was apprehended and his identity was verified. On the basis of suspicion, personal search of the appellant-accused was conducted. Thereafter, upon search of accused-appellant opium wrapped in a glazed paper was

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recovered from his waist tied with *parna*. Out of the recovered opium, two samples each of 10 grams were separated and remaining on weightment was found to be 880 grams. All the parcels were sealed. FIR(*supra*) was registered under Section 18 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 the Gazetted Officer, who was called at the spot, at the time of alleged recovery was not examined by prosecution and the link evidence is missing in the prosecution story. The seal on the case property was broken as admitted by PW-4 ASI Krishan Kumar and entire case of prosecution is based upon the testimonies of official witnesses and no independent witness was joined at the time of effecting the alleged recovery. Further there is a delay of 20 days in sending the representative sample to the office of Chemical Examiner and there are major discrepancies in the statements of prosecution witnesses. Lastly, he contended that appellant is not involved in any other case and has undergone a period of 07 months and 19 days of custody out of total sentence of 3½ years awarded to 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 such, the appellant does not deserve any leniency.

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 900 grams of opium, attracting the offence under Section 18 of NDPS Act, for which no minimum punishment has been prescribed. Appellant has already undergone custody of 07 months and 19 days



out of total sentence of 3½ years, in the instant case. Since there is no minimum punishment prescribed under Section 18 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 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.

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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 07.04.2003 and the appellant has been suffering the agony of trial for last almost 22 years. Since his conviction, the appellant has reformed into a law-abiding citizen and intends to live a peaceful life.

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

(i) The judgment dated 08.11.2010 passed by the learned Judge, Special Court, Sri Muktsar Sahib is upheld.

(ii) The order of sentence dated 08.11.2010 is modified to the extent that the sentence of rigorous imprisonment for 3½ years along with fine of Rs. 20,000/- 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**

**04.04.2025***Ajay Goswami**Whether speaking/reasoned*  
*Whether reportable**Yes/No*  
*Yes/No*