



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

454

CRA-S-474-SB-2007 (O&M)

Date of decision: 10.03.2025

Balwinder Kaur

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. L.S. Sidhu, Advocate
for the appellant.

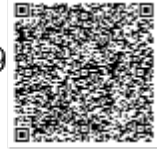
Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The prayer in the present appeal is to set-aside the judgment of conviction dated 01.03.2007 and order of sentence dated 02.03.2007 passed by learned Judge, Special Court, Moga, whereby the appellant was convicted and sentenced for the offence punishable under Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'the NDPS Act'), in the case stemming from FIR No.84 dated 20.07.2003, under Section 15 of the NDPS Act at Police Station Kot Ise Khan, District Moga.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 02 years and to pay fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 15 days.



3. Brief facts of the case are that on 20.07.2003, a police party headed by SI Sikandar Singh, Incharge, CIA Staff Dharamkot was on patrolling duty and when they reached near Gurudwara Baba Jhuggi Wala in the area of village Daulewala, SI Sikandar Singh got a secret information that accused Balwinder Kaur was indulged in the business of narcotics and if a raid is conducted, she can be apprehended. On the basis of secret information, a ruqa in writing was sent to the Police Station and thereafter, the FIR (supra) was registered. Thereafter, a raid was conducted at the cattle shed of the accused/appellant and she was apprehended with 35 Kgs of Poppy Husk and two samples i.e. 100 grams each were drawn from the bag, which were sent to the chemical examiner.

4. Learned counsel for the appellant, at the very outset, submits that he is not assailing the impugned judgment of conviction dated 01.03.2007 on merits and restricts his prayer qua modification of order on quantum of sentence, to that of the sentence already undergone by the appellant, as she has already undergone a period of 01 month and 10 days and she is not involved in any other criminal activity.

5. *Per contra*, learned State counsel opposes the prayer of the appellant on the ground that the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, she 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 35 kgs of Poppy Husk, attracting the offence of Section 15 the NDPS Act, for which no minimum punishment has been prescribed. As per custody certificate, she is not involved in any other case and has already undergone an actual sentence of 01 month and 10 days out of total sentence of 02 years, in the instant case. Since there is no minimum punishment prescribed under Section 15 of the 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 her.

7. In *Deo Narain Mandal Vs. 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, 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. Further, a two-Judge Bench of 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 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 Court below indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record.

9. The FIR in the present case was lodged on 20.07.2003 and the appellant has been suffering the agony of trial since the last about 21 years. Since her conviction, the appellant 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 of conviction dated 01.03.2007 passed by the learned Judge, Special Court, Moga is upheld.

(ii) The order of sentence dated 02.03.2007 is modified to the extent that the sentence of rigorous imprisonment for a period of 02 years and fine of Rs.2,000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by her.



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

(HARPREET SINGH BRAR)
JUDGE

10.03.2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No