



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

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CRA-S No.458-SB-2007 (O&M)

Date of decision: 10.03.2025

Surjit Singh and another

....Appellants

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gagandeep Singh, Advocate (*Amicus Curiae*)
for the appellants.

Mr. Harkesh Kumar, AAG, Haryana.

HARPREET SINGH BRAR J. (Oral)

1. The prayer in the present appeal is to set-aside the judgment of conviction dated 23.02.2007 and order of sentence dated 26.02.2007 passed by learned Additional Sessions Judge, Fatehabad whereby the appellants were 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.347 dated 25.07.2003, under Section 15 of the NDPS Act at Police Station Sadar Fatehabad.

2. The appellants were 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.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for 03 months.

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3. Brief facts of the case are that on 25.07.2003, a police party headed by ASI Atma Ram was on patrolling duty and present at bus-stand of village Behbalpur, when they saw two persons coming from the side of village Behbalpur on scooter. On seeing the police party, the driver of the scooter stopped the same and tried to take u-turn but the scooter had fallen and both the said persons tried to ran away from the spot, out of which one person succeeded in running away, however, the another accused/Surjeet Singh @ Nitia was apprehended at the spot and thereafter, recovery of 25 Kgs of Poppy Husk was effected and two samples of 100 grams each were drawn from the bag and then sent to the chemical examiner for its examination and subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act and later on, another accused Mahender was also arrested on 09.12.2003 on the basis of disclosure statement made by co-accused.

4. Learned *amicus curiae* contends that the learned Court below has fallen into grave error in convicting both the appellants as their guilt has not been proved beyond reasonable doubt. He contends that no independent witness has been joined in the investigation during the search proceedings despite the fact that the alleged place of recovery is a busy place. Further, PW-7 Atma Ram and PW-8 HC Vijay Singh admitted in their cross-examinations that they have reached the spot in a private jeep, however, the driver of the private jeep was not examined by the prosecution. He further contends that the appellant – Mahender Singh, is alleged to have been run away from the spot, however, there is



nothing on record to establish his identity. Lastly, he submits that the appellants have already undergone a period of 23 days in custody and they are not involved in any other criminal case.

5. *Per contra*, learned State counsel opposes the prayer of the appellants on the ground that the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record as such, they do 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 appellants were convicted for keeping in possession 25 kgs of Poppy Husk, i.e. intermediate quantity, attracting the offence of Section 15 the NDPS Act, for which no minimum punishment has been prescribed. As per custody certificate, both the appellants are not involved in any other case and have already undergone an actual sentence of 23 days out of total sentence of 02 years, in the instant case. Since there is no minimum punishment prescribed under Section 15 NDPS Act, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to both the appellants is reduced to the period already undergone by them.

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 Court below indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, the FIR (supra) was registered on 25.07.2003 and the appellants have been suffering the agony of trial for the last more than 21 years. Since their conviction, the appellants have grown into a law-abiding citizen and desire 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 23.02.2007 passed by the learned Additional Sessions Judge, Fatehabad is upheld.

(ii) The order of sentence dated 26.02.2007 is modified to the extent that the sentence of rigorous imprisonment for a period of 02 years and fine of Rs.10,000/- each along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.

11. The High Court Legal Services Authority is directed to pay remuneration to the learned *Amicus Curiae* as per rules.

12. 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