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

**CRA-S-1661-SB-2007 (O&M)
Date of Decision: 25.03.2025**

SHOBH RAM

...APPELLANT

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manpreet Singh, *Legal Aid Counsel*
for the appellant.

Mr. Harkesh Kumar, AAG Haryana.

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 07.07.2007 passed by learned Judge, Special Court, Panipat vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
20 of NDPS Act	Rigorous imprisonment for 04 years	Rs. 40,000/-	Rigorous imprisonment for eight months

2. Brief facts of the case are that on 26.09.2006, Jai Narain Assistant Sub Inspector CIA Staff was present at Babarpur Mandi turn G.T. Road, Panipat, when appellant was seen coming towards that side carrying a polythene bag. On suspicion accused-appellant was apprehended. Search of his person and belongings was conducted. Thereafter, on search of polythene bag, held by the appellant, 01 kilogram of *Charas* was recovered. Out of the bulk, two samples each of 50 grams were separated. All the parcels were sealed. FIR(*supra*) was registered under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act').

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3. Learned Legal Aid Counsel for the appellant *inter alia* contends that there is nothing on record to prove that appellant has committed the alleged offence. The alleged recovery is effected from a busy place, whereas no independent witness was joined during the course of investigation and entire case of the prosecution hinges upon the testimonies of official witnesses. Further notice served upon the appellant under Section 50 of NDPS Act was not read out to him and the recovery memo does not bear the thumb impression of the appellant, which is fatal to the case of the prosecution. Lastly he submits that the appellant has undergone 01 year 07 months and 02 days of custody out of total 04 years of sentence 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 01 kilograms of *Charas*, attracting the offence under Section 20 of NDPS Act, for which no minimum punishment has been prescribed. As per custody certificate, he has already undergone custody of 01 year 07 months and 02 days out of total sentence of 04 years, in the instant case. Since there is no minimum punishment prescribed under Section 20 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.

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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.

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 26.09.2006 and the appellant has been suffering the agony of trial

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for last more than 18 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 07.07.2007 passed by the learned Judge, Special Court, Panipat is upheld.

(ii) The order of sentence dated 07.07.2007 is modified to the extent that the sentence of rigorous imprisonment for 04 years and fine of Rs. 40,000/- 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 *Legal Aid Counsel*, as per rules.

(HARPREET SINGH BRAR)
JUDGE

25.03.2025*Ajay Goswami**Whether speaking/reasoned*
*Whether reportable**Yes/No*
Yes/No