



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

**CRA-S-1283-SB-2011
Date of decision: 03.04.2025**

GURNAM SINGH

...APPELLANT

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vishesh Jain, Advocate for the appellant.
(Legal Aid Counsel)

Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the present appeal is to set aside the judgment of conviction and order of sentence dated 08.03.2011 passed by learned Special Judge, Ferozepur, whereby the appellant was convicted and sentenced for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act'), in the case stemming from FIR No.330 dated 13.11.2005, under Section 15 of the NDPS Act at Police Station Sadar Jalalabad.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of one year and to pay fine of Rs.2,000/- and in default of payment of fine, to further undergo RI for 03 months.

3. Brief facts of the case are that on 13.11.2005, when ASI Tilak Raj along with other police officials was going from village Veroke, Kathgarh to



Mahalam and reached about half kilometer from village Mahalam, in connection with patrolling, the appellant was seen coming on a scooter Bajaj Chetak, carrying a plastic bag on it. On seeing the police, he became nervous and on suspicion, he was apprehended. Upon search of plastic bag, 12 kgs of Poppy Husk was recovered. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned legal aid counsel for the appellant *inter alia* contends that there is non-compliance of section 50 of the NDPS Act as at the time of his search, valid offer was not made to the appellant. Further, despite the fact that the place of recovery is a thoroughfare, no independent witness was joined during investigation. He furthermore contends that CFSL form was not prepared at the spot and there is an unexplained delay of 08 days in sending the sample to the Chemical Examiner. He submits that the link evidence is missing and there are material and major discrepancies in the statement of prosecution witnesses. Lastly, he submits that the appellant has already undergone total custody period of 10 months and 09 days, out of total sentence of one year, in the instant case and he is not involved in any other case.

5. *Per contra*, learned State counsel opposes the prayer of the appellant as the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record as such, he 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 12 kgs of Poppy Husk, which falls under the purview of Section 15 NDPS Act. As per his custody certificate, he has



already undergone an actual sentence of 10 months and 09 days out of total sentence of one year, in the instant case and he is not involved in any other case. Since there is no minimum punishment prescribed under Section 15 NDPS Act, for the non-commercial quantity 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.

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 trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, the FIR (*supra*) was lodged on 13.11.2005 and the appellant has been suffering the agony of trial for last more than 19 years. Since his conviction, he 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 dated 08.03.2011 passed by the learned Special Judge, Ferozepur is upheld.

(ii) The order of sentence of dated 08.03.2011 is modified to the extent that the sentence of rigorous imprisonment for one year and fine of Rs.2,000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

11. The High Court Legal Services Authority is directed to pay remuneration to the learned legal aid counsel as per rules.

April 03, 2025
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(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No