



compliance of the mandatory provisions of the NDPS Act. Section 42 of the NDPS Act has not been complied with and no independent witness was joined in the investigation at the time of alleged recovery. Further, there is an inordinate delay of 23 days in sending the representative sample to the office of the Chemical Examiner. Further, link evidence is missing in the present case which creates doubt on the case set up by the prosecution. The entire evidence led on behalf of the prosecution is contradictory and self-destructive. Further, he is not assailing the impugned judgment of conviction on merits and restricts his prayer to modification of the order on quantum of sentence, to that of the sentence already undergone by the appellant as he has already undergone an actual period of 06 months and 09 days in custody and he is not involved in any other criminal activity.

4. *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 and as such, he 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 6.3 grams of *heroin*, i.e. intermediate quantity, attracting the offence of Section 21 of NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate, appellant has already undergone an actual period of 06 months and 09 days out of total sentence of 02 years, in the instant case. Since there is no minimum punishment prescribed under Section 21 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 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.

7. 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.

8. 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



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appreciation of evidence available on record. However, the FIR (supra) was lodged on 26.01.2022 and the appellant has been suffering the agony of trial for last more than 03 years. Since his conviction, he has grown into a law-abiding citizen and desires 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 19.02.2025 passed by the learned Additional Sessions Judge, Karnal, is upheld.

(ii) The order of sentence dated 21.02.2025 is modified to the extent that the sentence of rigorous imprisonment for 02 years and fine along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

10. Petitioner be released forthwith if he is not required in any other case.

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

(HARPREET SINGH BRAR)
JUDGE

19.05.2025

Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No