



CRA-S-2135-SB-2007

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

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**CRA-S-2135-SB-2007
Date of decision : 01.04.2025**

Vijay Kumar and another

..... Appellants

VERSUS

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Tara Chand Dhanwal, Advocate, for the appellants.

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 and order of sentence dated 03.10.2007 respectively passed by learned Special Judge, Rupnagar, whereby, the appellants were 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.311 dated 03.11.2005, under Section 15 of the NDPS Act at Police Station Mohali

2. The appellants Vijay Kumar and Gopal Singh were convicted for keeping in possession of 19 Kg. and 13 Kg of Poppy Husk respectively and were sentenced as mentioned below:

Name	Offence	Sentence
Vijay Kumar	Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 03 years and to pay fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months.
Gopal Singh	Section 15 of the Narcotic Drugs and	Rigorous imprisonment for a period of 02 years and to



	Psychotropic Substances Act, 1985	pay fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.
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3. Learned counsel for the appellants contends that he is not assailing the impugned judgment of conviction dated 03.10.2007 on merits and restricts his prayer to modification of the order on quantum of sentence, to that of the sentence already undergone by the appellants, as they have already undergone more than 7 months of actual custody as per order dated 03.04.2008 and is not involved in any other criminal activity.

4. *Per contra*, learned State counsel opposes the prayer of the appellants as the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, they do 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 appellants were convicted for being in possession of 19 Kg. and 13 Kg of Poppy Husk respectively, i.e. intermediate quantity, attracting the offence of Section 15 NDPS Act, for which no minimum punishment has been prescribed. As per order dated 03.04.2008, the appellants have already undergone 7 months of sentence, 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 the appellants is reduced to the period already undergone by them.

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 appreciation of evidence available on record. However, the FIR (supra) was lodged on 03.11.2005 and the appellants have been suffering the agony of trial for last more than 19 years. Since their conviction, they have grown into a law-abiding citizen and desire 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 03.10.2007 passed by the learned Special Judge, Rupnagar, is upheld.

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(ii) The order of sentence dated 03.10.2007 is modified to the extent that the sentence of rigorous imprisonment for 03 years of appellant No.1-Vijay Kumar and 2 years of appellant No.2-Gopal Singh and fine along with default mechanism awarded to the appellants are reduced to the period of sentence already undergone by them.

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

(HARPREET SINGH BRAR)
JUDGE

01.04.2025
anil

Whether speaking / reasoned Yes/No
Whether Reportable Yes/No