



**1139 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1) CRA-S-2168-SB-2008
Date of decision: 06.05.2025

Balwinder Singh @ TitaAppellant

Versus

State of Punjab ...Respondent

2) CRA-S-2176-SB-2008

Tara ChandAppellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. D.N. Ganeriwala, Advocate
for the appellant(s).

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This common order shall dispose of both the aforementioned appeals as they arise from a similar factual matrix. However, for the sake of brevity, the facts are taken from CRA-S-2168-SB-2008.

2. The prayer in the present appeal is to set aside the judgment of conviction and order of sentence dated 01.11.2008 passed by learned Judge, Special Court, Bathinda, whereby, the appellant was convicted and sentenced for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act'), in the case stemming from FIR No.112 dated 17.07.2005, under Section 18 of the NDPS Act at Police Station Rampura.

2. The appellants were convicted and sentenced as mentioned below:



Accused	Recovery	Offence	Sentence
Balwinder Singh	01 kg of opium	Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 03 years and to pay fine of Rs.3,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.
Tara Chand	500 grams of opium	Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 01 year and 06 months and to pay fine of Rs.1,500/- and in default of payment of fine, to further undergo rigorous imprisonment for 45 days.
		Section 25 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 01 year and 06 months and to pay fine of Rs.1,500/- and in default of payment of fine, to further undergo rigorous imprisonment for 45 days.

Both the sentences of appellant Tara Chand were ordered to run concurrently.

3. Learned counsel for the appellants *inter alia* contends that the judgment passed by the learned trial Court is based upon surmises and conjectures. There is non-compliance of the mandatory provisions of the NDPS Act and as such, the onus is upon the prosecution to prove the case beyond reasonable doubt. The independent witness, namely, Gurman Singh, has not been examined by the prosecution which creates serious doubt on the case in hand. 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 appellants as they



have already undergone period of 01 month and 28 days in custody and they are 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 both the appellants were convicted for being in possession of 01 kg of opium and 500 grams of opium, respectively, i.e. intermediate quantity, attracting the offence of Section 18 of NDPS Act, for which no minimum punishment has been prescribed. As per their custody certificate, appellant No.1-Balwinder Singh has already undergone period of 01 month and 28 days out of total sentence of 03 years and appellant No.2-Tara Chand has already undergone period of 01 month and 28 days out of total sentence of 01 year and 06 months, in the instant case. Since there is no minimum punishment prescribed under Section 18 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 17.07.2005 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, both appeals are disposed of in the following terms:-

- (i) The judgment dated 01.11.2008 passed by the learned Judge, Special Court, Bathinda, is upheld.
- (ii) The order of sentence dated 01.11.2008 is modified to the extent that the sentence of rigorous imprisonment for 03 years; and 01 year and 06 months, respectively,



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fine along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.

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

11. A photo copy of this order be placed on the file of connected case.

(HARPREET SINGH BRAR)
JUDGE

06.05.2025

Neha

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