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741 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-2416-SB-2007 (O&M)

Date of Decision: 02.04.2025

AMARJIT SINGH

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Suman Sagar, Advocate *as Amicus Curiae*
for the appellant.

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 on quantum of sentence dated 22.01.2007/24.01.2007 passed by learned Special Judge, Ferozepur whereby the appellant was convicted and sentenced for the offence punishable under Section 15(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act') in the case stemming from FIR No. 13 dated 30.03.2003 registered at Police Station G.R.P. Abohar.

2. The appellant was sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
15(b) of NDPS Act	Rigorous imprisonment for 02 years	Rs. 20,000/-	Rigorous imprisonment for 03 months

3. Brief facts of the case are that on 30.03.2003, SI Mohan Singh of Police Station G.R.P. Abohar along with other police officials were present outside the entry gate of Railway Station Abohar at about 13.30 hours in connection with checking of bad elements and smugglers. The accused-appellant was seen coming from city side towards the railway station having a bag of white colour on his right shoulder, containing something. On seeing the police

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party, he tried to retreat and he was apprehended by SI Mohan Singh with the help of other police officials, on the basis of suspicion. His identity was verified. Search of the appellant-accused along with his belongings was conducted. Thereafter, on search of bag, carried by the appellant, poppy husk was recovered. Out of the bulk of poppy husk, two samples each of 250 grams were separated and remaining on weighment was found to be 11.500 kilograms. All the parcels were sealed. FIR(*supra*) was registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act').

4. Learned *Amicus Curiae* for the appellant *inter alia* contends that the appellant has been falsely implicated in the present case. The alleged recovery has been made from a public place and one person namely Balbir Singh was joined as independent witness. Still after use, the seal was not handed over to him and neither he has not been examined by the prosecution. Further, the link evidence is missing in the case. Prosecution has not been able to establish as to whether seal of 'MS' of 'MSK' was used and prosecution has further failed to prove the safe custody of the case property from 30.03.2003 to 02.04.2003. Additionally, PW-2 SI Mohan has admitted that the seal on the recovery memo i.e. MO-1 was slightly broken. Further, there is non-compliance of Section 50 of NDPS Act. Lastly she contends that appellant is not involved in any other case and has undergone a period of 01 year 02 months and 09 days of custody out of total sentence of 02 years awarded to him.

5. 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.

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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 kilograms of poppy husk, attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. Appellant has already undergone custody of 01 year 02 months and 09 days out of total sentence of 02 years, in the instant case. Since there is no minimum punishment prescribed under Section 15 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.

7. 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.

8. 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



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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 said judgment is based on correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 30.03.2003 and the appellant has been suffering the agony of trial for last more than 22 years. Since his conviction, the appellant has reformed into a law-abiding citizen and intends 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 22.01.2007 passed by the learned Special Judge, Ferozpur is upheld.

(ii) The order of sentence dated 24.01.2007 is modified to the extent that the sentence of rigorous imprisonment for 02 years along with fine of Rs. 20,000/- with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

12. High Court Legal Services Committee is directed to pay remuneration to the *Amicus Curiae*, as per rules.

(HARPREET SINGH BRAR)
JUDGE

02.04.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No