



**1156 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-2273-SB-2008
Date of decision: 06.05.2025

Anil Kumar Dabar and anotherAppellants

Versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Aditya Sanghi, Advocate
for the appellants.

Mr. Harkesh Kumar, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The learned State counsel, on instructions from Inspector Dharambir, submits that appellant No.2, namely, Sushil Kamal Walia, has died and thus, the present appeal *qua* appellant No.2, namely, Sushil Kamal Walia, has become abated.

2. In view of the above, the present appeal *qua* appellant No.2, namely, Sushil Kamal Walia, stands disposed of as abated.

3. The prayer in the present appeal is to set aside the judgment of conviction and order of sentence dated 22.11.2008 passed by learned Special Judge, Ambala, 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.77 dated 17.04.2002, under Sections 15 & 18 of the NDPS Act at Police Station Parao.

4. Appellant No.1 was convicted for keeping in possession 10 kg of poppy husk and sentenced as mentioned below:



Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of two years and to pay fine of Rs.10,000/- and in default of payment of fine, to further undergo imprisonment for 02 months.

5. Learned counsel for appellant No.1 *inter alia* contends that the learned Court below has fallen into grave error in convicting appellant No.1, as his guilt has not been proved beyond reasonable doubt. It is contended that the evidence led by the prosecution is highly contradictory. No independent witness was joined in the investigation. Further, there is an inordinate delay in sending the representative sample to the office of Chemical Examiner which creates serious doubt on the case set up by the prosecution and thus, possibility of tampering with the same cannot be ruled out. Further, the link evidence is also missing in the present case and the prosecution has failed to connect appellant No.1 with the conscious possession of the contraband. There is non-compliance of the mandatory provisions of the NDPS Act. 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 appellant No.1 as he has already undergone an actual period of 01 month and 23 days in custody and he is not involved in any other criminal activity.

6. *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.



7. 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 10 kg of poppy husk, i.e. intermediate quantity, attracting the offence of Section 15 of NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate, appellant has already undergone an actual period of 01 month and 23 days out of total sentence of 02 years, 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 appellant is reduced to the period already undergone by him.

8. 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.

9. 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

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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.

10. 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 17.04.2002 and appellant No.1 i.e. Anil Jumar Dabar has been suffering the agony of trial for about 23 years. Since his conviction, he has grown into a law-abiding citizen and desires to live a peaceful life.

11. Therefore, in view of the discussion above, the present appeal is disposed of in the following terms:-

(i) The judgment dated 22.11.2008 passed by the learned Special Judge, Ambala, is upheld.

(ii) The order of sentence dated 22.11.2008 is modified to the extent that the sentence of rigorous imprisonment for 02 years and fine along with default mechanism awarded to appellant No.1 is reduced to the period of sentence already undergone by him.

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

(HARPREET SINGH BRAR)
JUDGE

06.05.2025*Neha*

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