



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

**CRA-S-937-SB-2007
Date of decision: 21.03.2025**

AJAIB SINGH

...APPELLANT

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manpreet Singh, Advocate for the appellant.
(Legal Aid Counsel)

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 19.04.2007 passed by learned Judge, Special Court, Barnala, whereby the appellant was convicted and sentenced for the offence punishable under Section 15 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act'), in the case stemming from FIR No.16 dated 24.01.2005 under Section 15 of the NDPS Act at Police Station Tapa.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/- and in default of payment of fine, to further undergo simple imprisonment for one month.

3. Brief facts of the case are that on 24.01.2005, SI Kulwant Singh along with other police officials was holding *nakabandi* on the canal minor



bridge in the area of village Pakho Kalan for checking of suspected persons. In the meantime, at about 3:00 PM, appellant, carrying a plastic bag on his head, was seen coming from the side of village Baloke *via* canal minor bank. On seeing the police party, he became nervous and tried to retreat but was apprehended. Upon search of plastic bag, 15.5 kgs. of Poppy Husk was recovered. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned legal aid counsel for the appellant *inter alia* contends that there are several shortcomings and discrepancies in the statements of PW-2, namely, ASI Swarn Singh and PW-3, namely, Inspector Dalip Singh, which render their deposition unworthy of any reliance. He further submits that the link evidence is clearly missing. In the affidavit of PW-1 C. Balwinder Kumar, it is not clearly discernible as to when the sample and sample seal were handed over to him. Similarly, it was nowhere explained in the statement of PW-4 HC Avtar Singh as to when the case property along with the seal impression was deposited in the *malkhana*. Furthermore, one independent witness, who was joined in the investigation, was not examined by the prosecution. Lastly, he submits that the appellant has already undergone total custody period of 04 months and 17 days and is not involved in any other criminal case.

5. *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 as such, he does not deserve any leniency.



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 15.5 kgs of Poppy Husk, which falls under the purview of Section 15 NDPS Act. As per his custody certificate, he is not involved in any other case and has already undergone an actual sentence of 04 months and 17 days out of total sentence of 01 year, in the instant case. Since there is no minimum punishment prescribed under Section 15 NDPS Act, for the non-commercial quantity 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 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.

8. 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.

9. 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 24.01.2005 and the appellant has been suffering the agony of trial for last more than 20 years. Since his conviction, he has grown into a law-abiding citizen and desires 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 19.04.2007 passed by the learned Judge, Special Court, Barnala is upheld.

(ii) The order of sentence of even date i.e. 19.04.2007 is modified to the extent that the sentence of rigorous imprisonment for 01 year awarded to the appellant is reduced to the period of sentence already undergone by him.

(iii) Fine of Rs. 1,000/- imposed upon the appellant shall remain intact. The appellant is directed to deposit the amount of fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of



fine, the appellant shall be liable to be taken into custody and made to undergo simple imprisonment for one month.

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

12. The High Court Legal Services Authority is directed to pay remuneration to the learned legal aid counsel as per rules.

March 21, 2025
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(HARPREET SINGH BRAR)
JUDGE

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| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |