



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

599

CRA-S No.1425-SB-2007 (O&M)

Date of decision: 24.03.2025

Gurtej Singh

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sukhdeep Singh Chhatwal, Advocate (*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 of sentence dated 12.07.2007 passed by learned Judge, Special Court, Mansa whereby the appellant was convicted and sentenced for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'the NDPS Act'), in the case stemming from FIR No.106 dated 04.09.2002 registered under Section 15 of the NDPS Act at Police Station Sardulgarh.

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 03 months and to pay fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 01 month.

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3. Brief facts of the case are that on 04.09.2002, a police party headed by ASI Gurtej Singh on the basis of suspicion, apprehended the accused/appellant with 21 Kgs of Poppy Husk and subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae*, *inter alia*, contends that the prosecution has miserably failed to prove the conscious possession of the alleged contraband upon the appellant. Further the offer given to the appellant was defective one and as such, there is a complete non-compliance of Section 50 of the NDPS Act. Further, there was also an unexplained delay of 11 days in sending the representative sample of the alleged contraband to the FSL, which is fatal for the case set up by the prosecution. He further contends that Mr. Gurbachan Singh was joined as an independent witness and his testimony clearly indicates that the prosecution case is highly improbable as the independent witness was joined prior to chance recovery. He further submits that the appellant has been falsely implicated in the present case at the behest of his competitor, who was competing with the appellant for the post of Numberdar. Lastly, he submits that the appellant has already undergone a period of 02 months and 24 days in custody and is not involved in any other criminal case.

5. *Per contra*, learned State counsel opposes the prayer of the appellant on the ground that the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record as such, the appellant 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 21 kgs of Poppy Husk, i.e. intermediate quantity, attracting the offence of Section 15 of the NDPS Act, for which no minimum punishment has been prescribed. As per custody certificate, he is not involved in any other case and has already undergone an actual sentence of 02 months and 24 days out of total sentence of 03 months, 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.

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 Court below indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, the FIR (supra) was registered on 04.09.2002 and the appellant has been suffering the agony of trial for the last more than 22 23 years. Since his conviction, the appellant 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 of conviction dated 12.07.2007 passed by the learned Judge, Special Court, Mansa is upheld.

(ii) The order of sentence dated 12.07.2007 is modified to the extent that the sentence of rigorous imprisonment for a period of 03 months and fine of Rs.2,000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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11. The High Court Legal Services Authority is directed to pay remuneration to the learned *Amicus Curiae* as per rules.
12. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

24.03.2025
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No