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

CRA-S-2446-SB-2007

Date of decision:21.04.2025

DEESHO AND ANOTHER

..Appellants

Versus

STATE OF PUNJAB

..Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Khushboo Joria, Advocate as amicus curiae
for the appellants.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, (ORAL).

1. The prayer in the present appeal is to set aside the judgment of conviction and order of sentence dated 16.10.2007 passed by learned Special Judge, Hoshiarpur, whereby the appellants were 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.197 dated 11.11.2002 under Section 15 of the NDPS Act at Police Station Mahilpur.

2. The appellants were sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985.	Rigorous imprisonment for a period of 3 years each and to pay fine of Rs.10,000/- each and in default of payment of fine, to further undergo RI for 3 months.



3. Brief facts of the case are that in the intervening night of 10/11.11 2002, PW-3 ASI Yogesh Kumar alongwith PW-4 ASI Rajinder Nath and other police officials had laid a picket in the area of village Bhagora. At about 12 A.M. (in the night), a Tata sumo bearing No.HR-24F-4993, came from the side of village Baghora and was proceedings towards Mahilpur. ASI Yogesh Kumar made that vehicle to stop. Accused Kuldip Singh alias Bablu was driving the said vehicle whereas accused Harjit Singh alias Jeeta, Kailasho and Desho were sitting on the rear seats of the vehicle ASI Yogesh Kumar having suspicion informed the accused about their legal right to be searched in the presence of a Gazetted Officer or a Magistrate whereupon these accused reposed their confidence in DSP Navjot Singh. Thereafter, in the presence of DSP Navjot Singh and on his directions, search of the vehicle was conducted. One bag was found lying by the side of the driver's seat. Accused were also Carrying one bag each on their thighs. The search of all four bags was conducted and each bag was found to have contained 13 kg of poppy husk.

4. Learned amicus curiae for the appellants submits that the link evidence is missing Ex.DA proved on the file shows that CFSL form and sample seals were not deposited with the MHC at the time of depositing the case property with him. The entry of register No.19 produced in the court shows that the case property and the samples were not produced before the Magistrate when the appellants were produced for their remand before the Magistrate. The prosecution has failed to prove the ownership of the vehicle bearing No.HR-24-F-4993 from which the alleged recovery was effected and there is no evidence that the co-accused was driving the vehicle at the time of alleged recovery. There is delay of depositing the case property with the chemical examiner. No independent witness was joined by the Investigating Officer before the alleged recovery. The appellants-Deesho and Kailasho have



already undergone total custody period of 4 months and 17 days, out of total sentence of 3 years, in the instant case and they are not involved in any other case.

5. 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 as such, they do 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 appellants were convicted for being in possession of 13 kg of poppy husk each, which falls under the purview of Section 15 NDPS Act. As per their custody certificates, they have already undergone an actual sentence of 4 months and 17 days out of total sentence of 3 years, 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 appellants is reduced to the period already undergone by them.

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 11/11/2002 and the appellants have been suffering the agony of trial for last more than 22 years. Since their conviction, they have 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 16.10.2007 passed by the learned Special Court, Hoshiarpur is upheld.

(ii) The order of sentence dated 16.10.2007 is modified to the extent that the sentence of rigorous imprisonment for 3 years and fine of Rs.10,000/- each along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.



11. The High Court Legal Services Authority is directed to pay remuneration to the learned Amicus Curiae as per rules.

21.04.2025

Poonam

**(HARPREET SINGH BRAR)
JUDGE**

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