



CRA-S-1661-SB-2008 (O&M)

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1045 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1661-SB-2008 (O&M)
Date of Decision: 01.05.2025

JAGTAR SINGH

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Malkit Kaur, Advocate as *Amicus Curiae*
for the appellant.

Mr. Rishabh Singla, AAG Punjab.

Harpreet Singh Brar, J. (Oral)

1. Present appeal has been preferred by the appellant against the judgment of conviction and order on quantum of sentence dated 04.09.2008 passed by learned Judge, Special Court, Barnala vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
15 of NDPS Act	Rigorous imprisonment for six months	Rs. 500/-	Rigorous imprisonment for 15 days

2. Brief facts of the case are that on 22.08.2007, ASI Swaran Singh along with other police officials were on patrolling duty and proceeding from Tarak Sheel Chowk towards Bajakhana Road and when at about 2.40 PM, the police party reached adjacent to the brick kiln, then accused-appellant Jagtar Singh was seen coming from the opposite side, who was carrying a plastic bag on his head and on seeing the police party, he got perplexed and turned towards the brick kiln. On suspicion, ASI Swaran Singh with the help of other police officials, apprehended him and verified his name and address. Search of the appellant-accused along with his belongings was conducted. Thereafter, on

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search of plastic bag, carried by the appellant, poppy husk was recovered. Out of the poppy husk, two samples each of 250 grams were separated and remaining on weighment was found to be 7.500 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').

3. Learned *Amicus Curiae* for the appellant *inter alia* contends that the prosecution story does not inspire confidence and it is full of contradictions and lacks credibility. Perusal of affidavit of concerned officials, coupled with delay in sending the representative sample makes the case of prosecution doubtful. Further the FSL form was neither filled up at the spot nor deposited with the malkhana along with contraband. There is total non-compliance of Sections 42 and 57 of NDPS Act. Further, the appellant has undergone a period of 26 days of custody out of total sentence of 06 months awarded to him.

4. Per contra, learned State counsel opposes the prayer of the appellant on the ground that there is sufficient material available on record to indicate the complicity of the appellant and he is involved in one more case under NDPS Act. Thus, 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.

5. 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 8 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 26 days out of total sentence of 06 months, in the instant case. Since there is no minimum punishment prescribed under Section 15 of NDPS Act, this Court is of the

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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.

6. 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.

7. 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 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.

8. 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)

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was lodged on 22.08.2007 and the appellant has been suffering the agony of trial for last more than 17 years. Since his conviction, the appellant has reformed into a law-abiding citizen and intends to live a peaceful life.

9. Further, the primary consideration in matters where the petitioner/appellant is involved in other NDPS cases ought to be the severity of the offence. Moreover, Co-ordinate benches of this Court have deemed it appropriate to reduce the sentence imposed upon the accused to be the custody already undergone by them, in spite of their involvement in other cases pertaining to the NDPS Act in *Pritam Singh @ Preeti vs. State of Punjab* in *CRA-S-1769-SB-2010* decided on 03.04.2025, *Ram Lal vs. State of Haryanain* *CRA-S-986-SB-2005* decided on 11.05.2018, *Raj Pal vs. State of Haryanain* *CRA-S-68-SB-2005* decided on 28.04.2023, *Raj Pal vs. State of Haryanain* *CRA-S-34-SB-2005* decided on 28.04.2023 and *Gurmail Singh and others vs. State of Punjab* in *CRA-S-1976-SB-2007* decided on 28.03.2025

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

(i) The judgment dated 04.09.2008 passed by the learned Judge, Special Court, Barnala is upheld.

(ii) The order of sentence dated 04.09.2008 is modified to the extent that the sentence of rigorous imprisonment for 06 months along with fine of Rs. 500/- 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.



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

(HARPREET SINGH BRAR)
JUDGE

01.05.2025

Ajay Goswami

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No