



619 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1580-SB-2007
Date of decision: 25.03.2025

KULDEEP SINGH

...APPELLANT

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Suman Sagar, *amicus curiae*
for the appellant.

Mr. Harkesh Kumar, AAG, Haryana.

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 26.07.2007 passed by learned Presiding Officer, Special Court, Kurukshetra, 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.147 dated 29.06.2003, under Section 15 of the NDPS Act at Police Station Pehowa.

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 two years and to pay fine of Rs.20,000/- and in default of payment of fine, to further undergo SI for 02 months.



3. Brief facts of the case are that on 29.06.2003, ASI Nahar Singh along with other police officials was on patrolling and when they were present on Rajbaha Bridge Karah Sahab SI Surta Ram along with other police officials met them and they were talking. In the meantime, appellant having plastic *katta* came from the side of *Karah Sahab* on motorcycle and on seeing the police party, he turned his motorcycle. On suspicion, he was apprehended. Upon search of plastic *katta*, 26.600 kgs of Poppy Husk was recovered. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae* for the appellant *inter alia* contends that the prosecution has miserably failed to prove its case, beyond the shadow of reasonable doubt. She further contends that the learned trial Court has held the appellant guilty on the basis of highly doubtful evidence led by the prosecution. Furthermore, there is total non-compliance of Section 50 of NDPS Act as the offer made to the appellant was defective. She submits that the entire case of the prosecution is based upon the testimonies of the official witnesses. She further submits that no reason is explained for non-joining the independent witness, during the course of investigation. Furthermore, the CFSL form was not prepared at the spot and no such evidence was led by the prosecution. Lastly, she submits that the verification of affidavits of witnesses Exs.PG and PH submitted by PW-5 HC Satish Kumar and PW-6 Constable Daler Singh was not in accordance with law, as such, the same cannot be read in evidence. The appellant has already undergone total custody period of 03 months and 07 days, out of total sentence of 02 years and he is not involved in any other 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 26.600 kgs of Poppy Husk, which falls under the purview of Section 15 NDPS Act. As per his custody certificate, he has already undergone an actual sentence of 03 months and 07 days out of total sentence of two 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 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 29.06.2003 and the appellant has been suffering the agony of trial for last about 21 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 26.07.2007 passed by the learned Presiding Officer, Special Court, Kurukshetra is upheld.

(ii) The order of sentence of even date i.e. 26.07.2007 is modified to the extent that the sentence of rigorous imprisonment for two years and fine of Rs.20,000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.



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

March 25, 2025
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(HARPREET SINGH BRAR)
JUDGE

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