



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

614

**CRA-S No.1564-SB-2007 (O&M)**

**Date of decision: 25.03.2025**

Anil Kumar

....Appellant

Versus

State of Punjab

....Respondent

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

**Present:** Ms. Samridhi Goyal, 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 21.07.2007 passed by learned Judge, Special Court, Barnala 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.39 dated 16.03.2005 registered 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 06 months and to pay fine of Rs.500/- 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 16.03.2005, a police party headed by SI Kulwant Singh on the basis of suspicion, apprehended the accused/appellant with 10 Kgs of Poppy Husk and subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae* submits that the learned Judge, Special Court, has fallen into grave error while convicting the appellant by not considering the fact that there is total non-compliance of Section 50 of the NDPS Act and the case property was not produced before the SHO concerned. Further submits that the independent witness, who was associated during the course of investigation was not examined by the prosecution and the entire case of the prosecution is based upon testimony of official witnesses. Moreover, the CFSL form was neither filled at the spot nor deposited with the MHC along with the representative sample and the seal was not deposited with the Chemical Examiner. She further contends that there are major discrepancies in the statements of prosecution witnesses and even as per the order dated 28.08.2007, passed by this Court, when the sentence of the appellant was suspended, he has undergone actual custody of 01 month and 15 days out of 06 months.

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 10 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 order dated 28.08.2007, the appellant has already undergone an actual sentence of 01 month and 15 days out of total sentence of 06 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 16.03.2005 and the appellant has been suffering the agony of trial for the last more than 20 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 21.07.2007 passed by the learned Judge, Special Court, Barnala is upheld.***

***(ii) The order of sentence dated 21.07.2007 is modified to the extent that the sentence of rigorous imprisonment for a period of 06 months and fine of Rs. 500/- 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**

**25.03.2025**  
*yakub*

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