



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

CRA-S-1976-SB-2007  
Date of decision: 28.03.2025

Gurmail Singh and others ...Appellants  
Versus

State of Punjab ...Respondent

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

**Present:** Mr. Amritpal Singh Maan, Amicus Curiae  
for the appellants.

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 22.09.2007 passed by learned Judge, Special Court, Barnala, 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.309 dated 09.11.2005, under Section 15 of the NDPS Act at Police Station Barnala.

2. The appellants were sentenced as mentioned below:

<b>Offence</b>	<b>Sentence</b>
<b>Section 15</b> of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of <b>02 years</b> each and to pay fine of Rs.2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months each.

3. Brief facts of the case are that on 09.11.2005, ASI Baljit Singh along with a police party was on patrolling duty and proceeding from Mansa road towards Handiaya on the Kacha Path and when they reached about 100



**CRA-S-1976-SB-2007**

**-2-**

yards ahead of katcha path, Sukhdev Singh associated with them. Thereafter, when they reached near the gate of Ram Bagh, about about 10:00 A.M., the accused persons/appellants were seen and one of them holding the heavy gunny bag and another was putting something in the bag and they were apprehended with 35 Kg of Poppy Husk and two samples of 250 grams were drawn from the bag and then the same were sent to the chemical examiner. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae* for the appellants submits that the learned Court below has fallen into grave error in convicting the appellant, as his guilt has not been proved beyond reasonable doubt. He further contends that the Investigating Officer is the complainant in the present case. Further, the seal after use was not handed over to the independent witness, rather it was given to Constable Kulwant Singh PW-4. Further, the sample seal was not sent with the representative sample to the office of Chemical Examiner. As such, the link evidence in the prosecution story is completely missing. Further, there is an unexplained delay of 113 days in sending the representative sample to the Chemical Examiner. Further still, the testimony of witnesses were discrepant regarding weight used in drawing the sample.

5. *Per contra*, learned State counsel has filed custody certificate in the Court today which is taken on record and per contra, opposes the prayer made by counsel for the appellants and submits that the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record. He further submit that appellant No.1, namely, Gurmail Singh, is not involved in any other case, however, appellant No.2, namely,



Guljara Singh was involved in one more case and appellant No.3, namely, Makhan Singh, is involved in two more cases under the NDPS Act.

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 35 kg of Poppy Husk, i.e. intermediate quantity, attracting the offence of Section 15 NDPS Act, for which no minimum punishment has been prescribed. As per their custody certificate, appellants No.1 & 2 have already undergone an actual sentence of 04 months and 11 days and appellant No.3 has already undergone an actual sentence of 04 months and 14 days out of total sentence of 02 years, 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 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 09.11.2005 and the appellants have been suffering the agony of trial for last more than 20 years. Since their conviction, they have grown into a law-abiding citizen and desire 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 22.09.2007 passed by the learned Judge, Special Court, Barnala, is upheld.

(ii) The order of sentence dated 22.09.2007 is modified to the extent that the sentence of rigorous imprisonment for 02 years and fine along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.



CRA-S-1976-SB-2007

-5-

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

12. The High Court Legal Services Authority is directed to pay remuneration to the learned *Amicus Curiae*/Legal Aid Counsel, as per rules.

**(HARPREET SINGH BRAR)**  
**JUDGE**

**28.03.2025**

*Neha*

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