



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

CRA-S-2250-SB-2009
Date of decision: 21.04.2025

Lakhvir SinghAppellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. B.S. Bhalla Advocate
for the appellant.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the present appeal is to set aside the judgment of conviction dated 09.09.2009 and order of sentence dated 14.09.2009 passed by learned Special Judge, Moga, whereby, the appellant was convicted and sentenced for the offence punishable under Section 18 of the NDPS Act in the case stemming from FIR No.187 dated 07.06.2006 under Section 18 of the NDPS Act at Police Station Baghapurana, District Moga.

2. The appellant was convicted for keeping in possession 1 kg & 10 grams of opium and sentenced as mentioned below:

Offence	Sentence
Section 18 of NDPS Act	Rigorous imprisonment for a period of two and a half years and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 02 ^{1/2} months.

3. Learned counsel for the appellant *inter alia* contends that the learned Court below has fallen into grave error in convicting the appellant, as his guilt has not been proved beyond reasonable doubt. There is delay of 05 days in sending the representative sample to the office of Chemical Examiner



and no incriminating material was recovered from the possession of the appellant. The appellant has been falsely implicated in the present case and there was no independent witness joined in the investigation. Furthermore, there is non compliance of Section 42(2) of the NDPS Act. Lastly, the appellant has already undergone a period of 08 months and 26 days in custody and he is not involved in any other criminal activity.

4. *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.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellant was convicted under Section 18 of the NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate, he is not involved in any other case and has already undergone an actual sentence of 08 months and 26 days out of total sentence of two and a half years, in the instant case. Since there is no minimum punishment prescribed under under Section 18 of the 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.

6. 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.

7. 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.

8. 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 07.06.2006 and the appellant has been suffering the agony of trial for last more than 18 years. Since his conviction, he has grown into a law-abiding citizen and desires to live a peaceful life.

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



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(i) The judgment dated 09.09.2009 passed by the learned Special Judge, Moga, is upheld.

(ii) The order of sentence dated 14.09.2009 is modified to the extent that the sentence of rigorous imprisonment for two and a half years and fine along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

(HARPREET SINGH BRAR)
JUDGE

21.04.2025

Neha

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