



has been overlooked by the learned trial Court. One Billu Singh was associated as an independent witness but he has not been examined by the prosecution. The entire case of the prosecution hinges upon the testimony of the official witnesses and also, the link evidence is missing in the present case. He further submits that PW-4 could not explain the manner in which the sample was drawn. ASI Baljit Singh was the Investigating Officer who appeared as PW-5 and altogether took a different stand. Further, there is non-compliance of Section 57 of the NDPS Act. Lastly, counsel for the appellant submits that the appellant has already undergone an actual period of 01 month and 28 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 and 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 for being in possession of 10 kg of poppy husk, i.e. intermediate quantity, attracting the offence of Section 15 of NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate, appellant has already undergone an actual period of 01 month and 28 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.



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



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lodged on 18.08.2007 and the appellant has been suffering the agony of trial for last more than 17 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:-

(i) The judgment dated 05.11.2008 passed by the learned Judge, Special Court, Barnala, is upheld.

(ii) The order of sentence dated 05.11.2008 is modified to the extent that the sentence of rigorous imprisonment for 06 months 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.

11. 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

06.05.2025

Neha

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