



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

**CRA-S-3585-SB-2016
Date of decision: 06.05.2025**

BUTA RAM @ VISHAL AND ANOTHER

...APPELLANTS

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Vishal Sharma, Advocate for the appellants.
(Legal Aid counsel) (pro-bono)

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 and order of sentence dated 01.04.2016 passed by learned Judge, Special Court, Patiala, whereby, the appellant was convicted and sentenced for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), in the case stemming from FIR No.117 dated 09.07.2013 registered under Section 15 of NDPS Act at Police Station Shambhu.

2. The appellants were sentenced for keeping in their possession 52 kgs of Poppy Husk (26 kgs of Poppy Husk with each appellant) as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic	Rigorous imprisonment for a period of two and half years and to pay fine



Substances Act, 1985	of Rs.10,000/- each and in default of payment of fine, to further undergo RI for two months each.
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3. Learned Counsel for the appellants submits that he was appointed as legal aid counsel in the present case but he will argue the case *pro bono*. Learned counsel for the appellants, *inter alia*, contends that the prosecution's case is primarily based on the testimonies of official witnesses, with no independent witness having been associated at the time of the alleged recovery of contraband, despite the recovery location being a public thoroughfare. It is further contended that the seal, after use, was handed over to HC Surjit Singh (PW-1) instead of being entrusted to an independent witness, and was later returned to the Investigating Officer by the recovery witness, prior to the production of the case property, before the learned Ilaqa Magistrate. Moreover, PW-3, Constable Ashwani Kumar, in his affidavit Ex.PW3/A, deposed that the sample parcels bore the seal marked "CJ/RK," whereas, the prosecution asserts that the seal affixed was "CG/RK," thereby raising doubt on the authenticity of the sealing process. An unexplained delay of nine days in sending the sample parcels to the office of the Chemical Examiner further undermines proper handling and safekeeping of case property. Additionally, Ex.PX refers to two samples of 200 grams each being received, while the samples allegedly drawn by the Investigating Officer were of 250 grams each, resulting in a material inconsistency. It is also urged that the CFSL form was not filled at the spot of recovery and the recovery of poppy husk is alleged to have been effected from the possession of both accused persons separately;



however, a single joint consent memo was prepared, which is argued to be impermissible and constitutes non-compliance with Section 50 of the NDPS Act. Furthermore, as per the prosecution version, two sample parcels were drawn from each bulk parcel and one representative sample was drawn by the learned Ilaqa Magistrate from each bulk parcel, yet three sample parcels (MO-1 to MO-3), three representative sample parcels (MO-4 to MO-6), and three bulk parcels (MO-7 to MO-9) were produced in court, thereby revealing inconsistencies in the evidence and casting serious doubt on the prosecution case. As per the custody certificates, the appellant-Boota Ram has undergone a period of 01 year, 02 months and 23 days; the appellant-Puran Chand has undergone a period of 01 year, 04 months and 01 day and he is not involved in any other case.

4. *Per contra*, learned State counsel opposes the prayer of the appellants as the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record as such, they do not deserve any leniency. Moreover, appellant-Boota Ram is involved in five more cases.

5. 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 26 kgs of Poppy Husk each, which falls under the purview of Section 15 of NDPS Act. As per the custody certificates, appellant-Boota Ram has undergone a period of 01 year, 02 months and 23 days; the appellant-Puran Chand has undergone a period of 01 year, 04 months and 01 day and he is not involved in any other case. Since there is no minimum punishment prescribed under Section 15 of 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 appellants is reduced to the period already undergone by them.

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 09.07.2013 and the appellants have been suffering the agony of trial for last more than 11 years. Since their conviction, they have grown into law-abiding citizens and desire to live a peaceful life.

9. Further, the primary consideration in matters where the petitioner/appellant is involved in other NDPS cases ought to be the severity of the offence. Moreover, Co-ordinate benches of this Court have deemed it appropriate to reduce the sentence imposed upon the accused to be the custody already undergone by them, in spite of their involvement in other cases pertaining to the NDPS Act in *Pritam Singh @ Preeti vs. State of Punjab* in CRA-S-1769-SB-2010 decided on 03.04.2025, *Ram Lal vs. State of Haryana* in CRA-S-986-SB-2005 decided on 11.05.2018, *Raj Pal vs. State of Haryana* in CRA-S-68-SB-2005 decided on 28.04.2023, *Raj Pal vs. State of Haryana* in CRA-S-34-SB-2005 decided on 28.04.2023 and *Gurmail Singh and others vs. State of Punjab* in CRA-S-1976-SB-2007 decided on 28.03.2025.

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

(i) The judgment dated 01.04.2016 passed by the learned Judge, Special Court, Patiala is upheld.

(ii) The order of sentence dated 01.04.2016 is modified to the extent that the sentence of rigorous imprisonment for two and half years and fine of Rs.10,000/- each along with default



mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.

May 06, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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