



CRA-S-2055-SB-2006 (O&amp;M)

1

378

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

**CRA-S-2055-SB-2006 (O&M)  
Date of Decision: 24.03.2025**

AVTAR KUMAR

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mandeep Kaushik and Ms. Anju Sharma Kaushik, Advocates  
for the appellant.

Mr. Rishabh Singla, AAG Punjab.

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**Harpreet Singh Brar, J. (Oral)**

1. Present appeal has been preferred by the appellant against the judgment of conviction and order on quantum of sentence dated 12.10.2006 passed by learned Special Court, Fatehgarh Sahib vide which the appellant has been convicted and sentenced as mentioned below:

<b>Offence under Section</b>	<b>Sentence</b>	<b>Fine</b>	<b>Sentence in default of payment of fine</b>
15 of NDPS Act	Rigorous imprisonment for two years	Rs. 1,000/-	Rigorous imprisonment for fifteen days

2. Briefly stated the facts of the prosecution case are that on 14.04.2005 at about 3.00 PM police party headed by ASI Darshan Singh of Police Station Khamanon and other police officials were present in the area of Mansoorpur on patrolling duty, then the police party noticed a clean shaved person coming on foot from the side of Mansoorpur carrying a white coloured plastic *jhola* on his head. On the basis of suspicion, he was apprehended and upon asking, his identity was verified. On suspicion, search of the accused-appellant and his belongings was conducted and on checking the plastic *jhola*, held by appellant, poppy husk was found. Two samples each weighing 250

**CRA-S-2055-SB-2006 (O&M)**

grams were separated from the bulk and the remaining poppy husk upon weighment came to be 14.500 kilograms. Separate parcels of the samples as well as remaining bulk of the poppy husk were prepared, which were sealed. FIR(*supra*) was registered under Sections 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act').

3. Learned Counsel for the petitioner submits that he is not assailing the impugned judgment of conviction dated 12.10.2006 passed by learned Special Judge, Fatehgarh Sahib on merits and restricts his prayer to modification of the order on quantum of sentence dated 12.10.2006 to that of sentence already undergone by the appellant as he has already undergone a period of more than 02 months out of total sentence of two years imposed upon him and he is not involved in any other case.

4. Per contra, learned State counsel opposes the prayer of the appellant on the ground that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, the appellant 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 15 kilogram of poppy husk, attracting the offence under Section 15 of 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 02 months and 10 days out of total sentence of two years, in the instant case. Moreover, learned counsel for the appellant has not assailed the judgment of conviction on merits. Rather, he has restricted his prayer only qua modification of order on quantum of sentence. Since there is no minimum punishment prescribed under Section 15 of NDPS

**CRA-S-2055-SB-2006 (O&M)**

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 v. State of UP (2004) 7 SCC 257**, a three Judge bench of 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, a two Judge Bench of the Hon'ble Supreme Court in **Ravada Sasikala v. 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 said judgment is based on



**CRA-S-2055-SB-2006 (O&M)**

**4**

correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 14.04.2005 and the appellant has been suffering the agony of trial for last almost 20 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 12.10.2006 passed by the learned Special Judge, Fatehgarh Sahib is upheld.

(ii) The order of sentence dated 12.10.2006 is modified to the extent that the sentence of rigorous imprisonment for two years awarded to the appellant is reduced to the period of sentence already undergone by him.

(iii) Fine of Rs. 1,000/- imposed upon the petitioner shall remain intact. The petitioner is directed to deposit the amount of fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the petitioner shall be liable to be taken into custody and made to undergo simple imprisonment for one month.

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

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

**24.03.2025**

*Ajay Goswami*

*Whether speaking/reasoned*  
*Whether reportable*

*Yes/No*  
*Yes/No*