



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

459

CRA-S-530-SB-2007 (O&M)

Date of decision: 10.03.2025

Arun Kumar @ Murli

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Jaspal Kaur, Advocate (*Amicus Curiae*)
for the appellant.

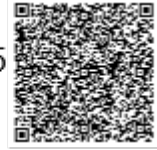
Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The prayer in the present appeal is to set-aside the judgment of conviction dated 23.02.2007 and order of sentence dated 24.02.2007 passed by learned Judge, Special Court, Bathinda whereby the appellant was convicted and sentenced for the offence punishable under Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'the NDPS Act'), in the case stemming from FIR No.522 dated 03.11.2001, under Section 15 of the NDPS Act at Police Station Kotwali, District Bathinda.

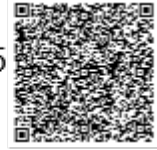
2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 02 years and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 06 months.



3. Brief facts of the case are that on 03.11.2001, a police party headed by ASI Kuldeep Singh was on patrolling duty and when they reached at Ghona Railway Crossing on Naruana Road, they joined one independent witness Hazura Singh and when they were patrolling ahead, appellant along with co-accused were found travelling on a scooter. Both of them were apprehended and recovery of 25 Kgs of Poppy Husk was effected from them in the presence of Deputy Superintendent of Police and one sample of which was drawn from the bag. The sample of 250 gms was then sent to the chemical examiner for its examination and subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae* 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. Moreover, the fact that the appellant was in conscious possession of the contraband has not been proved on record. Further, there was also an unexplained delay of 05 days in sending the representative sample of the alleged contraband to the FSL Laboratory. She further contends that although the alleged independent witness was joined in the investigation, however, he was not examined by the prosecution and there are major discrepancies in the statements of the witnesses who have been examined by the prosecution. She further contends that the mandatory provisions of the NDPS Act have not been followed in the present case. Lastly, she submits that the appellant has already undergone a period of

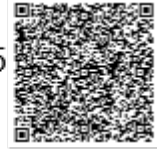


02 months and 13 days in custody and is not involved in any other criminal case.

5. *Per contra*, learned State counsel opposes the prayer of the appellant on the ground that 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.

6. 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 25 kgs of Poppy Husk, i.e. intermediate quantity, attracting the offence of Section 15 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 02 months and 13 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 appellant is reduced to the period already undergone by him.

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 Court below indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, the FIR (supra) was registered on 03.11.2001 and the appellant has been suffering the agony of trial for the last more than 23 years. Since his conviction, he has grown into a law-abiding citizen and desires 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 of conviction dated 23.02.2007 passed by the learned Judge, Special Court, Bathinda is upheld.

(ii) The order of sentence dated 24.02.2007 is modified to the extent that the sentence of rigorous imprisonment for a period of 02 years and fine of Rs.5,000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

11. The High Court Legal Services Authority is directed to pay remuneration to the learned *Amicus Curiae* as per rules.

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

(HARPREET SINGH BRAR)
JUDGE

10.03.2025

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Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No