



CRA-S-1471-SB-2009 (O&M)

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1282 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1471-SB-2009 (O&M)
Date of Decision: 14.05.2025

SWARAN SINGH

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Navdeep Singh Khokhar, Advocate as *Amicus Curiae*
for the appellent.

Mr. Rishabh Singla, AAG Punjab.

Harpreet Singh Brar, J. (Oral)

1. Present appeal has been preferred by the appellent against the judgment of conviction and order on quantum of sentence dated 22.04.2009 passed by learned Judge, Special Court, Kapurthala vide which the appellent has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
18 of NDPS Act	Rigorous imprisonment for one year	Rs. 1,500/-	Rigorous imprisonment for 15 days

2. Brief facts of the case are that on 27.08.2002, ASI Mohan Singh along with other police officials, were proceeding from Hamira toward Lakhan Khole in connection with patrolling duty and when the police party reached near railway crossing Hamira, one Paramjit Singh joined as independent witness. Thereafter, the police party again proceeded on patrolling duty and when they reached at village Lakhan Khole, they spotted a person coming from the side of village Khole carrying a *Jhola* (bag) in his right hand, who on seeing the police party, got perplexed and tried to slip away but he was apprehended and his name and address was verified. On the basis of suspicion, personal search of the



appellant as well as the bag carried by him, was conducted and upon search of said bag, opium wrapped in a glazed paper was recovered. Out of the total quantity of opium, two samples each of 10 grams were separated and the remaining opium on weighment was found to be 480 grams. All the parcels were sealed. FIR(*supra*) was registered under Section 18/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act').

3. Learned *Amicus Curiae* for the appellant *inter alia* contends that appellant has been falsely implicated in the present case and 500 grams of opium has been planted upon him and further the representative sample was sent to the office of chemical examiner after a delay of 30 days and the said delay remained unexplained and this fact alone is fatal to the case of the prosecution. Further the CFSL form was neither filled up at the spot, nor the same was deposited with the MHC along with the case property. Further, independent witness was joined during the investigation, but he was not examined by the prosecution. There are material and major discrepancies in the statement of witnesses and the entire case of prosecution hinges upon the testimonies of official witnesses. The appellant has already undergone custody period of 09 months and 14 days 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 500 grams of opium, attracting the offence under Section 18 of NDPS Act, for which no minimum punishment has been

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prescribed. Perusal of custody certificate of the appellant indicates that he has already undergone custody of 09 months and 17 days out of total sentence of 01 year, in the instant case. Since there is no minimum punishment prescribed under Section 18 of 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 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



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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 correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 27.08.2002 and the appellant has been suffering the agony of trial for last more than 22 years. Since his conviction, the appellant has reformed into a law-abiding citizen and intend 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 22.04.2009 passed by the learned Judge, Special Court, Kapurthala is upheld.

(ii) The order of sentence dated 22.04.2009 is modified to the extent that the sentence of rigorous imprisonment for 01 year along with fine of Rs. 1,500/- 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. High Court Legal Services Authority is directed to pay remuneration to learned *Amicus Curiae* as per rules.

(HARPREET SINGH BRAR)
JUDGE

14.05.2025

Ajay Goswami

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No