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

**CRA-S-1213-SB-2009 (O&M)
Date of Decision: 10.03.2025**

BALWINDER KUMAR ALIAS BINDER**...APPELLANT****Versus****STATE OF PUNJAB****...RESPONDENT****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. Kanisth Ganeriwala, Advocate
for the appellant.

Mr. Subhash Godara, Addl. A.G., Punjab.

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 02.05.2009 passed by learned Judge, Special Court, Jalandhar vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
21 of NDPS Act	Rigorous imprisonment for one year	Rs. 500/-	Rigorous imprisonment for two months

2. The prosecution story, in nutshell, is that on 10.03.2004 SHO Jaskaranjit Singh alongwith other police officials were present at Bus Stand Bharsinghpura, where they received a secret information that Balwinder Kumar is indulging in smuggling of smack and is going to village Sailkiana and if raid be conducted, he could be apprehended at the spot. Finding the secret information to be reliable, *naka* was laid. During *Nakabandi*, one person was seen coming on scooter bearing No. CH01-N-3908, who was signalled to stop and he disclosed his name as Balwinder Kumar @ Binder. The Investigating Officer disclosed him that he suspected some contraband in his possession and

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on suspicion, personal search of the petitioner-accused was conducted and from the right pocket of the trouser of the petitioner, smack wrapped in glazed paper was recovered, out of which two samples of 5 gms each were separated and remaining on weighment came to 40 gms, which were converted into parcels and were sealed by the Investigating Officer. After completion of investigation and on receipt of the report of the Chemical Examiner Ex. PH, challan was prepared and presented in the court. Subsequently, FIR(*supra*) was registered under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act').

3. Learned counsel for the appellant 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. Learned counsel further contends that there was an unexplained delay in sending the representative sample of the alleged contraband to the Forensic Science Laboratory. Further, there are major discrepancies in the statements of the witnesses who have been examined by the prosecution. He further contends that the mandatory provisions of the NDPS Act have not been followed in the present case. Lastly, he submits that the appellant has already undergone a period of 05 months and 01 day of custody and is not involved in any other criminal 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 50 grams of smack, attracting the offence under

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Section 21 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 05 months and 01 day out of total sentence of 01 year, in the instant case. Since there is no minimum punishment prescribed under Section 21 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 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.

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

(i) The judgment dated 02.05.2009 passed by the learned Judge, Special Court, Jalandhar is upheld.

(ii) The order of sentence dated 02.05.2009 is modified to the extent that the sentence of rigorous imprisonment for one year awarded to the appellant is reduced to the period of sentence already undergone by him.

(ii) Fine of Rs. 500/- 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.

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

(HARPREET SINGH BRAR)
JUDGE

10.03.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No