



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

1258

**CRA-S-921-SB-2009 (O&M)
Date of decision: 13.05.2025**

Gurmel Singh and another

....Appellants

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Khushboo Joria, Advocate (*Amicus Curiae*)
for the appellants.

Mr. Nitesh Sharma, 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 27.03.2009 passed by learned Special Judge, Ferozepur whereby the appellants were convicted and sentenced for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'the NDPS Act'), in the case stemming from FIR No.112 dated 24.05.2003 registered under Section 15 of the NDPS Act at Police Station Sadar Abohar.

2. The appellants were found in possession 25 Kgs of Poppy Husk, for which they were convicted and sentenced as follows:

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



	rigorous imprisonment for 02 months each.
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3. Learned *amicus curiae*, *inter alia*, contends that the entire case of the prosecution is based upon testimony of official witnesses. No effort has been made by the investigating officer to join any independent witness during the course of investigation or at the time of alleged recovery. Further the alleged recovery was effected on 24.05.2003 whereas the representative sample was sent for chemical examination on 29.05.2003, after an inordinate delay of about 05 days and as such, tampering of the samples cannot be ruled out. Further, the material questions as well as the report of the chemical examiner were not put to the appellant when his statement was recorded under Section 313 Cr.P.C. The appellant No.1 Gurmel Singh has already undergone a period of 04 months and 09 days in custody whereas the appellant No.2 Gurdev Kaur has undergone a period of 04 months and 13 days and they are not involved in any other criminal case.

4. *Per contra*, learned State counsel opposes the prayer of the appellants 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, the appellants do 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 appellants were convicted for being in possession of 25 Kgs of Poppy Husk, i.e. intermediate quantity, attracting the offence of Section 15 of



the NDPS Act, for which no minimum punishment has been prescribed. As per custody certificate, the appellants are not involved in any other case and have already undergone an actual sentence of more than 04 months out of total sentence of 02 years, respectively in the instant case. Since there is no minimum punishment prescribed under Section 15 of the NDPS Act, 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 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, the 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 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 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. The FIR (supra) in the present case was registered on 24.05.2003 and the appellants have been suffering the agony of trial since the last about 22 years. Since their conviction, the appellants have grown into a law-abiding citizen and desire to live a peaceful life.

9. Consequently, the present appeal is disposed of in the following terms:-

(i) The judgment of conviction dated 27.03.2009 passed by the learned Special Judge, Ferozpur is upheld.

(ii) The order of sentence dated 27.03.2009 is modified to the extent that the sentence of rigorous imprisonment for a period of 02 years each and fine along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.



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

11. All the pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

13.05.2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No