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546 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1088-SB-2007 (O&M)
Date of Decision: 20.05.2025

RAJESH KUMAR

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Nisha, Advocate as *Amicus Curiae*
for the appellant.

Mr. Rishabh Singla, AAG 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 19.05.2007 passed by learned Judge, Special Court, Amritsar 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 four years	Rs. 10,000/-	Rigorous imprisonment for six months

2. Brief facts of the case are that on 21.03.2002, ASI Jagdish Kumar along with other police officials were present at Khalsa College T-point in connection with patrolling duty, where they received a secret information that Rajesh Kumar (appellant) was selling intoxicating drugs like injections, tablets, capsules by moving about in the vicinity of Kot Khalsa, Daim Ganj and Putligar in the jurisdiction of Police Station Islamabad. It was further informed that if a blockade is laid, then he can be apprehended with large quantity of intoxicating drugs. Finding the information to be reliable, accused-appellant was arrested and a plastic bag containing various drugs were recovered from his possession.

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Parcels of various drugs were prepared. All the parcels were sealed. 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 *Amicus Curiae* for the appellant *inter alia* contends that recovery of drugs in the present case are not covered under the mandatory provisions of NDPS Act, which is duly proved by DW-2 Harvinder Singh, official of the Department of Health and Family Welfare Punjab, who has also proved the license of the medical store run by the appellant. Further a valid license has been duly proved on record and the prosecution has not examined any representative from the manufacturing company although details and particulars of the manufacturer were available on record and the case of the appellant is covered under the provisions of Drugs and Cosmetics Act 1945. Further, there is total non-compliance of mandatory provisions of Sections 42 and 50 of NDPS Act, which is fatal to the case of the prosecution. The appellant has undergone actual custody of 06 months and 12 days out of total sentence of 04 years awarded to 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 40.8 grams of Dextroproxyphene contained in capsules and tablets, attracting the offence under Section 21 of NDPS Act, for which no minimum punishment has been prescribed. Perusal of custody certificate of the appellant indicates that he is not involved in any other case and



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has already undergone custody of 06 months and 12 days out of total sentence of 04 years, 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 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.

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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 21.03.2002 and the appellant has been suffering the agony of trial for last more than 23 years. Since his conviction, the appellant has reformed into a law-abiding citizen and intends 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 dated 19.05.2007 passed by the learned Judge, special Court, Amritsar is upheld.

(ii) The order of sentence dated 19.05.2007 is modified to the extent that the sentence of rigorous imprisonment for 04 years along with fine of Rs. 10,000/- with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

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

(HARPREET SINGH BRAR)
JUDGE

20.05.2025*Ajay Goswami**Whether speaking/reasoned*
*Whether reportable**Yes/No*
Yes/No