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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-113-SB-2007

Date of decision: 07.03.2025

Kashmir Singh

....Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Japjit Singh Johal, 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 and order of sentence dated 25.03.2006 passed by learned Judge, Special Court, Rupnagar, whereby, the appellant was convicted and sentenced for the offence punishable under Sections 15/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘NDPS Act’), in the case stemming from FIR No.144 dated 26.06.2003, under Section 15/61/85 of the NDPS Act at Police Station Sadar Ropar.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Sections 15/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of three years and to pay fine of Rs.20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

3. Brief facts of the case are that on 26.06.2003, a police party headed by SI Manvir Singh was on patrolling duty in the area of T-point

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Behrampur in the presence of Mohinder Sen Garg, Excise Inspector, Circle Ropar and a police party headed by ASI Jaswant Singh also there when they saw the accused/appellant coming from the side of Gurudwara Sahib carrying bags, the appellant was apprehended with 08 Kg of Poppy Husk and two samples of which were drawn from the bag. The samples of 250 gram each were then sent to the chemical examiner. Subsequently, FIR (*supra*) was registered under Sections 15/61/85 of the NDPS Act.

4. Learned *amicus curiae inter alia* contends that the seal after use was retained by the police party. Further, neither CFSL form was filled at the spot nor such form was deposited in the Malkhana along with the case property. He further submits that there is a delay in sending the representative sample to the office of Chemical Examiner. The alleged recovery was effected on 26.06.2003, however, the representative sample was dispatched on 10.07.2003 and delay in this regard has not been explained. Further, there is non-compliance of Section 50 of the NDPS Act. Lastly, the Investigating Officer is the complainant in the present case. 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 10 months and 26 days in custody and is not involved in any other criminal case.

5. *Per contra*, learned State counsel opposes the prayer of the appellant as 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 08 kg of Poppy Husk, i.e. intermediate quantity, attracting the offence of Sections 15/61/85 of 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 10 months and 26 days out of total sentence of 03 years, in the instant case. Since there is no minimum punishment prescribed under Sections 15/61/85 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 trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 26.06.2003 and the appellant has been suffering the agony of trial for last more than 21 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 dated 25.03.2006 passed by the learned Special Judge, Rupnagar, is upheld.

(ii) The order of sentence dated 25.03.2006 is modified to the extent that the sentence of rigorous imprisonment for 03 years with fine of Rs.20,000/- along 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. The High Court Legal Services Authority is directed to pay remuneration to the learned *Amicus Curiae*/Legal Aid Counsel, as per rules.

(HARPREET SINGH BRAR)
JUDGE

07.03.2025
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No