



558

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1155-SB-2007
Date of decision: 20.03.2025

HARBANS SINGH

...APPELLANT

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jaiveer Singh, *amicus curiae*
for the appellant.

Mr. Harkesh Kumar, AAG, Haryana.

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 24.05.2007 passed by learned Additional Sessions Judge, Fatehabad, whereby the appellant was convicted and sentenced for the offence punishable under Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘NDPS Act’), in the case stemming from FIR No.146 dated 03.03.2003, under Section 15 of the NDPS Act at Police Station Sadar Fatehabad.
2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of one year and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo simple imprisonment for five months.

3. Brief facts of the case are that on 03.03.2003, SI Khayli Ram along with other police officials was present in the area of Bighar Head in connection with routine patrolling, when they saw the appellant, having a



plastic bag upon his head, came from the side of village Banawali towards Bighar head on foot. On seeing the police, he turned back and tried to run away but was apprehended. Upon search of plastic bag, 18 kgs of Poppy Husk was recovered. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae* for the appellant *inter alia* contends that the impugned judgment of conviction is based on conjectures and surmises. He further contends that the alleged recovery was made from the place, where many persons were present, but no independent witness was joined at the time of effecting the said recovery and no any reason was given for doing the same. He submits that there is complete non-compliance of Section 50 of NDPS Act and offer given to the appellant is defective. Further, there is a delay in sending the representative sample to the forensic science laboratory as discernible from Ex.P-14. Lastly, he submits that the appellant has already undergone total custody period of 04 months and 17 days 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 18 kg of Poppy Husk, which falls under the purview of Section 15 NDPS Act. As per his custody certificate, he is not involved in any other case and has already undergone an actual sentence of 04



months and 17 days out of total sentence of 01 year, in the instant case. Since there is no minimum punishment prescribed under Section 15 NDPS Act, for the non-commercial quantity 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 03.03.2003 and the appellant has been suffering the agony of trial for last about 22 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, both the appeals are disposed of in the following terms:-

- (i) The judgment dated 24.05.2007 passed by the learned Additional Sessions Judge, Fatehabad is upheld.
- (ii) The order of sentence of even date i.e. 24.05.2007 is modified to the extent that the sentence of rigorous imprisonment for 01 year and fine of Rs.5,000/- 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* as per rules.

March 20, 2025
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(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |