

575

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1283-SB-2007

Date of decision: 24.03.2025

Rajinder Singh and another

Versus

....Appellants

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. L.S. Sidhu, Advocate
for the appellants.

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 dated 04.07.2007 and order of sentence dated 05.07.2007 passed by learned Special Judge, Ferozepur, whereby, the appellants were 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.196 dated 01.06.2003, under Section 15 of the NDPS Act at Police Station Sadar Fazilka.
2. The appellants were sentenced as mentioned below:

Offence	Sentence
Section 15 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of two years each and to pay fine of Rs.20,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months each.

3. Brief facts of the case are that on 01.06.2003, ASI Barjinder Singh, Incharge, Police Post, Arniwala along with HC Sukhwinderpal Singh and other police officials was on patrolling duty at the bridge of canal minor built on



Kandhwala Hazarkhan Koharianwali road and they saw the appellants coming on scooter from the side of village Koharianwali and when ASI Barjinder Singh gave signal to the scooter to stop, the appellants stopped the scooter at a distance of 50-60 yards behind the place of *nakabandi*. The appellants were apprehended with 17 kg 750 grams of Poppy Husk in the presence of one Jaspal Singh i.e. the independent witness and two samples of 250 grams each were drawn from the bag and then the same was sent to the chemical examiner. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned counsel for the appellants submits that the learned Court below has fallen into grave error in convicting the appellants, as their guilt has not been proved beyond reasonable doubt. It is contended that there is non-compliance of Section 50 of the NDPS Act and the independent witness, namely, Jaspal Singh has not been examined. Further, the linking evidence is also missing in the present case and ownership of the alleged scooter has not been proved by the prosecution. There was also an unexplained delay of 04 days in sending the sample of the alleged contraband to the FSL Laboratory. He further contends that he is not assailing the impugned judgment of conviction dated 04.07.2007 on merits and restricts his prayer to modification of the order of quantum of sentence, to that of the sentence already undergone by the appellants, as appellant No.1-Rajinder Singh has already undergone a period of 05 months and 10 days and is not involved in any other criminal case. Appellant No.2-Sema Singh has already undergone a period of 05 months and 03 days in custody and is involved in one more case in which he is on bail.

5. *Per contra*, learned State counsel opposes the prayer of the appellants as the learned Court below has passed a well-reasoned judgment



based on correct appreciation of evidence available on record as such, they do 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 appellants were convicted for being in possession of 17 kg 750 grams of Poppy Husk, i.e. intermediate quantity, attracting the offence of Section 15 NDPS Act, for which no minimum punishment has been prescribed. As per their custody certificate, appellant No.1-Rajinder Singh has already undergone a period of 05 months and 10 days and appellant No.2-Sema Singh has already undergone a period of 05 months and 03 days out of total sentence of 02 years, in the instant case. Since there is no minimum punishment prescribed under Section 15 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.

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 01.06.2003 and the appellants have been suffering the agony of trial for last more than 21 years. Since their conviction, they have grown into a law-abiding citizen and desire 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 04.07.2007 passed by the learned Special Judge, Ferozepur, is upheld.

(ii) The order of sentence dated 05.07.2007 is modified to the extent that the sentence of rigorous imprisonment for 02 years with fine along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.



CRA-S-1283-SB-2007

-5-

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

(HARPREET SINGH BRAR)
JUDGE

24.03.2025

Neha

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