

CRA-S-1466-SB-2007 (O&M)1

603IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1466-SB-2007 (O&M)
Date of Decision: 25.03.2025

GHITRI KHAN

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Sadhvi Bharti, *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 20.07.2007 passed by learned Judge, Special Court, Barnala vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
15 of NDPS Act	Rigorous imprisonment for nine months	Rs. 500/-	Rigorous imprisonment for one month

2. Brief facts of the case are that on 07.10.2005, ASI Amrik Singh along with other police officials, in connection with patrolling were present near the canal bridge of village Rureke Kalan. While ASI Amrik Singh was talking to one Jarnail Sigh, from the path of Balo canal, one person was seen coming, who was carrying a plastic bag on his head. On seeing the police party, he got perplexed and turned towards the village. On suspicion, he was apprehended and upon asking, the said person disclosed his name as Ghitri Khan (appellant herein). On the basis of suspicion, search of the appellant-accused along with his belongings was conducted. Thereafter, on search of plastic bag, held by the

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appellant, poppy husk was recovered. Out of the bulk of poppy husk, two samples each of 250 grams were separated and remainder was found to be 13.500 kilograms. All the parcels were sealed. FIR(*supra*) was registered under Section 15 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 there is complete non-compliance of Section 50 of NDPS Act as no Gazetted Officer was called at the spot at the time of alleged recovery. Further, one independent witness namely Jarnail Singh was joined during the investigation, however, he was not examined by the prosecution and the conviction is based upon the testimonies of police officials only, which cannot sustain in the eyes of law. There are material discrepancies in the statements of ASI Amrik Singh and HC Satpal Singh. Lastly, she submits that the appellant has already undergone a period of 02 months and 08 days out of total sentence of 09 months imposed upon 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 14 kilograms of poppy husk, attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate, he has already undergone an actual sentence of 02 months and 08 out of total sentence of 09 months, in the instant case. Since there is no minimum punishment prescribed under Section 15 of



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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.

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

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correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 07.10.2005 and the appellant has been suffering the agony of trial for last more than 19 years. Since his conviction, the appellant has reformed into a law-abiding citizen and intends to live a peaceful life.

9. Therefore, in view of the discussion above, the present appeal is disposed of in the following terms:-

(i) The judgment dated 20.07.2007 passed by the learned Judge, Special Court, Barnala is upheld.

(ii) The order of sentence dated 20.07.2007 is modified to the extent that the sentence of rigorous imprisonment for nine months along with fine of Rs. 500/- with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

11. High Court Legal Services Committee is directed to pay remuneration to the *Amicus Curiae*, as per rules.

(HARPREET SINGH BRAR)
JUDGE

25.03.2025*Ajay Goswami**Whether speaking/reasoned**Whether reportable**Yes/No**Yes/No*