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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1577-SB-2007
Date of decision: 25.03.2025

Budh Singh

....Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sanjeev Manrai, Senior Advocate with
Mr. Rohit Bhardwaj, Advocate
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 28.07.2007 passed by learned Judge, Special Court, Bathinda, 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.33 dated 28.02.2003, under Section 15 of the NDPS Act at Police Station Sangat.

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 six months and to pay fine of Rs.3,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

3. Brief facts of the case are that on 28.02.2003, ASI Manoj Kumar along with other police officials was on patrolling duty and were going towards village Fallar from Chak Ruldu Singh Wala and when they reached at turning



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leading to village Fallar, they spotted the appellant coming from the side of Village Panniwala, carrying a bag over his head. The appellant was apprehended with 15 Kg 250 grams of Poppy Husk and sample of 250 grams was 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 senior counsel for the appellant submits that the learned Court below has fallen into grave error in convicting the appellant, as his 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 linking evidence is also missing. The independent witness, namely, Teja Singh, has not been examined by the prosecution and there is inordinate delay of seven days in sending the sample to the office of the chemical examiner. There are major discrepancies and contradictions in the statements of the witnesses who have been examined by the prosecution. He further contends that he is not assailing the impugned judgment of conviction dated 28.07.2007 on merits and restricts his prayer to modification of the order on quantum of sentence, to that of the sentence already undergone by the appellant, as vide order dated 15.10.2007, he has already undergone a period of 04^{1/2} months in custody out of substantive sentence of one year and six months 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

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for being in possession of 15 kg 250 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 order dated 15.10.2007 passed by this Court, sentence of the appellant was suspended and has already undergone incarceration for a period of 4^{1/2} months out of total sentence of one year and six months, 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 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

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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 28.02.2003 and the appellant has been suffering the agony of trial for last more than 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, the present appeal is disposed of in the following terms:-

(i) The judgment dated 28.07.2007 passed by the learned Judge, Special Court, Bathinda, is upheld.

(ii) The order of sentence dated 28.07.2007 is modified to the extent that the sentence of rigorous imprisonment for 01 year and 06 months with fine 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.

(HARPREET SINGH BRAR)
JUDGE

25.03.2025*Neha*

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