

...APPELLANT

STATE OF PUNJAB

...RESPONDENT

Present: Ms. Sidhi Bansal, Advocate as *amicus curiae*
for the appellant.

Mr. Nitesh Sharma, DAG, 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 08.08.2007 passed by learned Judge, Special Court, Mansa whereby the appellant was convicted and sentenced for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act'), in the case stemming from FIR No.171 dated 05.09.2002 under Section 15 of the NDPS Act at Police Station City, Mansa.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 06 months and to pay fine of Rs.3,000/- and in default of payment of fine, to further undergo RI for 01 month.

3. Brief facts of the case are that on 05.09.2002, when ASI Chanan Singh along with other police officials was in the revenue limits of Mansa, in



connection with patrolling and turned towards College side, the appellant along with other co-accused was seen coming on a scooter on *kacha* path. On seeing the police, out of nervousness, they tried to turn the scooter backwards. On suspicion, they were apprehended. Upon search of scooter, a bag was found, from which, 25 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 entire case of the prosecution hinges upon the statements of the official witnesses. She further contends that one Ramesh Kumar, who was joined as independent witness during investigation, was not examined by the prosecution. Furthermore, there is a delay of 06 days in sending the representative sample to the office of Chemical Examiner. She submits that the link evidence in the chain of prosecution is missing. Further, there is discrepancy with regard to the seal, as in view of the case set up by the prosecution, the Gazetted Officer, who was called at the spot, has put his seal, thereafter, the investigating officer also put his seal, whereas, prosecution witness, who deposited the sample in the office of Chemical Examiner, has clearly deposed that there was only one seal on the sample. She submits that it is a case of composite search as at the time of search of the appellant along with bag was conducted, as such, there is complete non-compliance of the safeguard provided under Section 50 of the NDPS Act. Additionally, no inventory was prepared at the spot and deposited in the *malkhana*, as such, there is a non-compliance of Section 52-A of the NDPS Act. She still further submits that the conviction of the appellant was not sustained in view of the aforementioned loopholes and shortcomings in the case of the prosecution. In



support of her contentions, she places reliance upon the judgment passed by this Court in *Jagtar Singh vs. State of U.T. Chandigarh, 2023 (4) RCR (Criminal) 602*. Lastly, she submits that the appellant has already undergone total custody period of 03 months and 09 days, out of total sentence of 06 months, in the instant case and he is not involved in any other 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 25 kgs of Poppy Husk, which falls under the purview of Section 15 NDPS Act. As per his custody certificate, he has already undergone an actual sentence of 03 months and 09 days out of total sentence of six months, 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 05.09.2002 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 08.08.2007 passed by the learned Judge, Special Court, Mansa is upheld.



(ii) The order of sentence of dated 08.08.2007 is modified to the extent that the sentence of rigorous imprisonment for six months and fine of Rs.3,000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

11. The High Court Legal Services Authority is directed to pay remuneration to the learned *Amicus Curiae* as per rules.

April 03, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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