



639 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1) CRA-S-1702-SB-2007
Date of decision: 26.03.2025

Jagsir Singh Appellant

Versus

State of Punjab ...Respondent

2) CRA-S-1722-SB-2007
Date of decision: 26.03.2025

Baljit Singh Appellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Madan Sandhu, Advocate
for the appellants.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This common order shall dispose of both the aforementioned appeal(s) as they arise from a similar factual matrix. However, for the sake of brevity, the facts are taken from CRA-S-1702-SB-2007.

2. The prayer in the present appeal(s) is to set aside the judgment of conviction and order of sentence dated 26.07.2007 passed by learned Judge, Special Court, Mansa, whereby, the appellants were 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.21 dated 08.04.2002, under Section 15 of the NDPS Act at Police Station Jaurkian.

2. The appellants were sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of six months each and to pay fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month.

3. Succinctly, the facts of the case are that on 08.04.2002 ASI Pritpal Singh along with other police officials was on patrolling duty and was going from village Behniwal to village Chehlawali and when they reached near the bridge of canal minor in the revenue limits of village Chehlanwali, the appellants were seen sitting on a gunny bag towards the side of village Chehlanwala and were apprehended with 23 Kg of poppy husk and two samples of 100 grams each were drawn from the bag and then the same were 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 also the link evidence is missing in the present case. Further, the alleged independent witness Makhan Singh, has not been examined and there are glaring discrepancies in the statement of prosecution witnesses which creates doubt in the case set up by the prosecution. He further contends that he is not assailing the impugned judgment of conviction dated 26.07.2007 on merits and restricts his prayer to modification of the order on quantum on sentence, to that of the sentence already undergone by the appellants, as they have already undergone a period of 02 months and 23 days



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in custody and they are involved in one more case in which they are out from Central Jail.

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 and 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 23 kg 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, they have already undergone an actual sentence of 02 months and 23 days out of total sentence of 06 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 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 08.04.2002 and the appellants have been suffering the agony of trial for last more than 22 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 appeals are disposed of in the following terms:-

(i) The judgment dated 26.07.2007 passed by the learned Judge, Special Court, Mansa, is upheld.

(ii) The order of sentence dated 26.07.2007 is modified to the extent that the sentence of rigorous imprisonment for 06 months each and fine along with default mechanism awarded to the

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appellants is reduced to the period of sentence already undergone by them.

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

12. A photo copy of this order be placed on the file of connected case.

(HARPREET SINGH BRAR)
JUDGE

26.03.2025

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