



CRA-S-1622-SB-2008 (O&M)

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1039 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1622-SB-2008 (O&M)
Date of Decision: 01.05.2025

MANA RAM

...APPELLANT

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Angrej Singh Sarwara, Advocate as *Amicus Curiae*
for the appellant.

Mr. Harkesh Kumar, AAG Haryana.

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 26.08.2008/28.08.2008 passed by learned Additional Sessions Judge, Hisar vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
18 of NDPS Act	Rigorous imprisonment for two years	Rs. 5,000/-	Rigorous imprisonment for 03 months

2. Brief facts of the case are that on 01.01.2006, ASI Sushil Chander along with other police officials were present near bus stand of Uklana Mandi in connection with patrolling duty, when a person was seen coming from the side of Surewala Chowk, who on seeing the police party suddenly turned back and started walking swiftly. On suspicion, the said person was apprehended and his name and address was verified, who disclosed his name as Mana Ram (appellant herein). Search of the appellant-accused was conducted. Thereafter, on search of left pocket of the appellant, a polythene of black colour containing opium milk was recovered. Out of the said opium, two samples each of 20 grams were

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separated and remaining on weighment was found to be 160 kilograms. All the parcels were sealed. FIR(*supra*) was registered under Section 17/18/61/85 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 the prosecution has not been able to prove its case beyond the shadow of reasonable doubt. Further, there is non-compliance of Section 50 of NDPS Act and the link evidence is missing in the case. As per the affidavit Ex. P-1 filed by PW-1 Didar Singh, it has been submitted that the representative sample was deposited with the FSL Madhuban on 18.01.2006, however, as per the report from the FSL Madhuban, the sample was received on 20.01.2006. As such, it is not discernible as to who retained the sample for 02 days. Further, the retained sample was sent to the office of chemical examiner, after a delay of 17 days, which creates a serious dent on the case set up by the prosecution. Further, the recovery was effected from a busy place, however, no independent witness was joined.

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 200 grams of opium milk, attracting the offence under Section 18 of NDPS Act, for which no minimum punishment has been prescribed. Appellant has already undergone custody of 02 months and 16 days out of total sentence of 02 years, in the instant case. Since there is no minimum punishment prescribed under Section 18 of NDPS Act, this Court is of the



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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 correct appreciation of evidence available on record. However, the FIR (supra)



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was lodged on 01.01.2006 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 26.08.2008 passed by the learned Additional Sessions Judge, Hisar is upheld.

(ii) The order of sentence dated 28.08.2008 is modified to the extent that the sentence of rigorous imprisonment for 02 years along with fine of Rs. 5,000/- 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

01.05.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No