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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-163-SB-2008
Date of decision: 03.04.2025

RAJESH @ KAKA

...APPELLANT

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Jashanpreet, Advocate as *amicus curiae*
for the appellant.
Mr. Harkesh Kumar, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the present appeal is to set aside the judgment of conviction dated 27.11.2007 and order of sentence dated 28.11.2007 passed by learned Judge, Special Court, Panipat, whereby the appellant was convicted and sentenced for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘NDPS Act’), in the case stemming from FIR No.172 dated 28.04.2007, under Section 20 of the NDPS Act at Police Station Chandni Bagh Panipat.
2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of two and half years and to pay fine of Rs.25,000/- and in default of payment of fine, to further undergo RI for 06 months.

3. Brief facts of the case are that on 28.04.2007 when ASI Rajbir Singh of Police Station Chandni Bagh, Panipat was present at Check Post, the appellant was seen coming from the side of Sector 24, Panipat. On suspicion, he was apprehended. Upon his personal search, two small polythene bags



attached with back side of both legs were recovered, from which, 250 grams of *Charas* was recovered. Subsequently, FIR (*supra*) was registered under Section 20 of the NDPS Act.

4. Learned *amicus curiae* for the appellant *inter alia* contends that provisions of Section 100 of Cr.P.C. have not been complied with, which are mandatory in nature, in view of the provisions contained in Section 51 of the NDPS Act. She further contends that to lend any credence to the case set up by the prosecution, no independent witness was examined. Furthermore, there is non-compliance of Section 50 of the NDPS Act, as search of the appellant was not conducted, as per the option given to him. Learned counsel submits that there is discrepancy in the deposition of PW-8 as compared to the statement of PW-1 with regard to the contraband. She further submits that as per the statement of investigating officer, the weight of the sample was 25 grams and as per the report of Forensic Science Laboratory, the weight of the sample was 27.800 grams. Furthermore, there is a delay of 07 days in sending the representative sample to the office of Chemical Examiner. Lastly, she submits that the appellant has already undergone total custody period of 06 months and 09 days, out of total sentence of two and half years, 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 250 grams of *Charas*, which falls under the purview of Section 20 NDPS Act. As per his custody certificate, he has already undergone an actual sentence of 06 months and 09 days out of total sentence of two and half years, in the instant case. Since there is no minimum punishment prescribed under Section 20 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 28.04.2007 and the appellant has been suffering the agony of trial for last about 18 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 27.11.2007 passed by the learned Judge, Special Court, Panipat is upheld.
- (ii) The order of sentence of dated 28.11.2007 is modified to the extent that the sentence of rigorous imprisonment for two and half years and fine of Rs.25,000/- 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 |