

CRA-S-1746-SB-2007 (O&M)1

647IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1746-SB-2007 (O&M)
Date of Decision: 27.03.2025

KAMALJIT SINGH @ POLA

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Poorvi Sharma, Advocate as *Amicus Curiae*
for the appellant.

Mr. Rishabh Singla, AAG Punjab.

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 04.08.2007 passed by learned Special Judge, Rupunagar vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
15 of NDPS Act	Rigorous imprisonment for 1½ years	Rs. 500/-	Rigorous imprisonment for two months

2. Brief facts of the case are that on 06.10.2005, SI Incharge Police Post Bela alongwith Head Constable Bachittar Singh and other police officials in government vehicle No. PB-12-A/4829 were present at bus stand Bela, when an informer gave a secret information that Kamaljit Singh is selling poppy husk on *katcha* passage on the bank of river in the area of village Ferozepur and in case raid is conducted, he can be apprehended. On receipt of said information, police party proceeded towards the disclosed place and the accused-appellant was present there. He was apprehended and poppy husk and plastic mugs were visible in the bag carried by him. Out of the recovered poppy husk, two samples

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of 250 grams each were separated and remaining on weighment was found to be 10.500 kilograms. All the parcels were sealed. FIR(*supra*) was registered under Section 15 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 one independent witness namely Harnek Singh was associated with the police party during the course of investigation, however he was not examined by prosecution. As such, it would not be safe to convict the appellant solely on the basis of testimonies of official witnesses. There is non-compliance of Section 42 of NDPS Act and after receipt of secret information, no report was sent to Superior Officer, as required. Further, the grounds of arrest have not been conveyed to the appellant or his wife in a meaningful manner and there are major discrepancies in the statements of material witnesses, which goes to the root of the case and vitiates the entire trial. Lastly she submits that the appellant is not involved in any other case and has undergone 02 months and 16 days of custody out of total sentence of 1½ year awarded to him.

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 11 kilograms of poppy husk, attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been

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prescribed. Appellant has already undergone custody of 02 months and 16 days out of total sentence of 1½ year, in the instant case. Since there is no minimum punishment prescribed under Section 15 of 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.

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.

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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) was lodged on 06.10.2005 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 04.08.2007 passed by the learned Special Judge, Rupnagar is upheld.

(ii) The order of sentence dated 04.08.2007 is modified to the extent that the sentence of rigorous imprisonment for 1½ year along with fine of Rs. 500/- 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

27.03.2025*Ajay Goswami**Whether speaking/reasoned*
*Whether reportable**Yes/No*
Yes/No