



CRA-S-1754-SB-2007 (O&M)

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649 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1754-SB-2007 (O&M)
Date of Decision: 27.03.2025

JARNAIL SINGH

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Aakriti 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 01.09.2007 passed by learned Judge, Special, Bathinda 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(c) of NDPS Act	Rigorous imprisonment for nine months	Rs. 1,000/-	Rigorous imprisonment for one month

2. Brief facts of the case are that on 03.09.2003, ASI Gurcharan Singh alongwith other police officials were holding picket on Refinery Road near Fallar link road where DSP Sukhdev Singh came present. Meanwhile, Hero Honda motorcycle of Red Colour bearing registration No. PB-46-1123 came from fallar side on which two persons were riding. SI Malkiat Singh signalled the motorcycle to stop and driver of the motorcycle tried to run away after jumping from the motorcycle. However, driver of the said motorcycle along with motorcycle and pillion rider were nabbed. Pillion rider disclosed his name as Jarnail Singh (appellant herein). On suspicion, personal search of the

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appellant was conducted and a piece of cloth tied around his waist under shirt was recovered, which was containing opium wrapped in glazed paper. Two samples of 10 grams each were separated and remaining on weighment was found to be 280 grams. All the parcels were sealed. FIR(*supra*) was registered under Section 18 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 during the course of investigation, one Raj Singh was joined as independent witness, however while deposing as prosecution witness, he has not supported the case of the prosecution and has been declared as hostile. As such, there is no corroboration to the case set up by the prosecution and the entire case is based upon the testimonies of official witnesses. Further, the prosecution has failed to explain the delay of 08 days in sending the representative sample to the Chemical Examiner, which itself is fatal to the case of prosecution. Further, the presence of PW-2 is doubtful at the place of occurrence, who has been called as Gazetted Officer as he has not put his seal on any of the memos prepared at the spot. Further, neither the CFSL form was filled up at the spot nor case property was deposited with the *malkhana*. Lastly she submits that the appellant is not involved in any other case and has undergone 02 months and 22 days of custody out of total sentence of 09 months 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

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for being in possession of 300 grams of opium, attracting the offence under Section 18(c) of NDPS Act, for which no minimum punishment has been prescribed. Appellant has already undergone custody of 02 months and 22 days out of total sentence of nine months, in the instant case. Since there is no minimum punishment prescribed under Section 18(c) 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



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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) was lodged on 03.09.2003 and the appellant has been suffering the agony of trial for last more than 21 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 01.09.2007 passed by the learned Judge, Special Court, Bathinda is upheld.

(ii) The order of sentence dated 01.09.2007 is modified to the extent that the sentence of rigorous imprisonment for nine months and fine of Rs. 1,000/- 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

27.03.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No