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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1717-SB-2008 (O&M)
Date of decision: 02.05.2025

Nyamat Ali and another
....Appellants

Versus

State of Punjab
...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Dhirinder Chopra, Advocate
for the appellants.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the present appeal is to set aside the judgment of conviction dated 05.09.2008 and order of sentence dated 08.09.2008 passed by learned Special Judge, Moga, whereby, the appellants were convicted and sentenced for the offence punishable under Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘NDPS Act’), in the case stemming from FIR No.268 dated 22.08.2006, under Section 15 of the NDPS Act at Police Station Baghapurana, District Moga.
2. The appellants were convicted for keeping in possession 10 kgs of poppy husk and sentenced as mentioned below:

Offence	Sentence
Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 01 year each and to pay fine of Rs.2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month each.



3. Learned counsel for the appellants *inter alia* contends that the appellants have been falsely implicated in the present case and there is non-compliance of the mandatory provisions of the NDPS Act. Independent witness, namely, Roop Singh was not examined and there is an inordinate delay of 06 days in sending the representative sample to the office of the Chemical Examiner. Further, link evidence is missing in the present case which creates doubt on the case set up by the prosecution. There are also material contradictions in the statements of the prosecution witnesses and the prosecution has failed to prove the conscious possession of the appellants over the contraband. Further, he is not assailing the impugned judgment of conviction on merits and restricts his prayer to modification of the order on quantum of sentence, to that of the sentence already undergone by the appellants, as appellant No.1-Nyamat Ali has already undergone an actual period of 01 month and 25 days in custody and he is involved in two more cases, one under the Excise Act and another under Sections 452/323/506/34 of IPC in which he is on bail, whereas, appellant No.2-Jagtar Singh has already undergone an actual period of 01 month and 27 days and he is involved in four other NDPS cases.

4. *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.

5. 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 10 kgs of poppy husk, i.e. intermediate quantity,



attracting the offence of Section 15 (b) NDPS Act, for which no minimum punishment has been prescribed. As per their custody certificate, appellant No.1-Nyamat Ali has already undergone an actual period of 01 month and 25 days and appellant No.2-Jagtar Singh has already undergone an actual period of 01 month and 27 days out of total sentence of 01 year, in the instant case. Since there is no minimum punishment prescribed under Section 15(b) 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.

6. 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.

7. 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



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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 same is based on correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 22.08.2006 and the appellants have been suffering the agony of trial for last more than 18 years. Since their conviction, they have grown into a law-abiding citizen and desire 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 05.09.2008 passed by the learned Special Judge, Moga, is upheld.

(ii) The order of sentence dated 08.09.2008 is modified to the extent that the sentence of rigorous imprisonment for 01 year and fine along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.

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

(HARPREET SINGH BRAR)
JUDGE

02.05.2025

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