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778 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-19-SB-2008 (O&M)
Date of Decision: 02.04.2025

MAHABIR

...APPELLANT

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Srishti Shukla, 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 29.11.2007/03.12.2007 passed by learned Special Judge, Jind 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 three years	Rs. 25,000/-	Rigorous imprisonment for three months

2. Brief facts of the case are that on 21.03.2006, ASI Luxmi Narain, along with other police officials, in connection with patrolling duty, in Govt. vehicle bearing No. HR-31A-416, were present on the road leading from Julana to Lakhan Majra. The secret informer informed the I.O. that Mahabir Singh resident of village Hathwala had been coming from Lakhan Majra in a bus or in other vehicle and he is in possession of contraband. On this information, the police party parked their vehicle and started walking for the accused, who had got down from the bus stand, Pauli. After 20 minutes, they noticed a person carrying a plastic bag on his head coming from bus stand, Pauli. He was

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apprehended on the basis of suspicion and his identity was verified. Search of the appellant-accused along with his belongings was conducted. Thereafter, on search of plastic bag, carried by the appellant, poppy husk was recovered. Out of the poppy husk, two samples each of 100 grams were separated and remaining on weighment was found to be 5.800 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 the appellant has been falsely implicated in the present case at the behest of Sarpanch of village Akalgarh and 6 kg of contraband has been implanted upon him. No independent witness was joined at the time of alleged recovery of contraband, however the alleged contraband was recovered at a very busy place, at the time of evening. Further, there is non-compliance of Section 50 of NDPS Act. The offer given to the appellant was defective in nature. Further, the representative sample was sent after a delay of 07 days to the office of Chemical Examiner and there are material discrepancies and inconsistencies in the statements of official witnesses. Further, the appellant is not involved in any other case and has undergone a period of 03 months and 19 days of custody out of total sentence of 03 years 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 6 kilograms of poppy husk, attracting the offence



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under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. Appellant has already undergone custody of 03 months and 19 days out of total sentence of 03 years, 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



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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 21.03.2006 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 29.11.2007 passed by the learned Special Judge, Jind is upheld.

(ii) The order of sentence dated 03.12.2007 is modified to the extent that the sentence of rigorous imprisonment for 03 years along with fine of Rs. 25,000/- 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

02.04.2025

Ajay Goswami

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No