



1112 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2027-SB-2008
Date of decision: 05.05.2025

SHAMSHAD ALI

V/S

...APPELLANT

STATE OF PUNJAB

...RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Shivaly Singla, Advocate
 for the appellant. (Amicus Curiae)

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 and order of sentence dated 30.07.2008 passed by learned Judge, Special Court, Sangrur, whereby the appellant was convicted and sentenced for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘NDPS Act’), in the case stemming from FIR No.9 dated 19.02.2004 under Section 15 of the NDPS Act at Police Station Amargarh.
2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of one year and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo RI for one month.



3. Brief facts of the case are that on 19.02.2004, ASI Kaur Singh along with other police officials was going on the metalled bank of canal in the revenue limits of village Banbhaura in connection with patrolling and joined an independent witness, namely, Bhim Sain. When the police party was at a distance of 500 yards from village Banbhaura at about 9:15 AM, the appellant, carrying a plastic bag on his head was seen coming and on seeing the police party turned towards ditches. On suspicion, he/she was apprehended. Upon search of plastic bag, 6 kgs of Poppy Husk was recovered. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae* for the appellant *inter alia* contends that the entire case of the prosecution hinges upon the testimonies of official witnesses. Further, one witness, namely, Bhim Singh, who was joined by the investigating officer, was not examined by the prosecution. Furthermore, the recovery memo does not bear the date of recovery and the signatures of DSP Parambir Singh Gill are not there on the personal search memo. She submits that there is total non-compliance of mandatory provisions of the NDPS Act. Lastly, she submits that the appellant has already undergone total custody period of 06 months and 03 days, out of total sentence of one year, in the instant 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. Moreover, he is involved in one more case.

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 6 kgs of Poppy Husk, which falls under



the purview of Section 15 of NDPS Act. As per his custody certificate, he has already undergone an actual sentence of 06 months and 03 days out of total sentence of one year, in the instant case. Since there is no minimum punishment prescribed under Section 15 of 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. Further, the primary consideration in matters where the petitioner/appellant is involved in other NDPS cases ought to be the severity of the offence. Moreover, Co-ordinate benches of this Court have deemed it appropriate to reduce the sentence imposed upon the accused to be the custody already undergone by them, in spite of their involvement in other cases pertaining to the NDPS Act in ***Pritam Singh @ Preeti vs. State of Punjab*** in ***CRA-S-1769-SB-2010*** decided on 03.04.2025, ***Ram Lal vs. State of Haryana*** in ***CRA-S-986-SB-2005*** decided on 11.05.2018, ***Raj Pal vs. State of Haryana*** in ***CRA-S-68-SB-2005*** decided on 28.04.2023, ***Raj Pal vs. State of Haryana*** in ***CRA-S-34-SB-2005*** decided on 28.04.2023 and ***Gurmail Singh and others vs. State of Punjab*** in ***CRA-S-1976-SB-2007*** decided on 28.03.2025

10. 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 19.02.2004 and the appellant has been suffering the agony of trial for last more than 21 years. Since his conviction, he has grown into a law-abiding citizen and desires to live a peaceful life.

11. Therefore, in view of the discussion above, the present appeal is disposed of in the following terms:-

(i) The judgment dated 30.07.2008 passed by the learned Judge, Special Court, Sangrur is upheld.

(ii) The order of sentence of dated 30.07.2008 is modified to the extent that the sentence of rigorous imprisonment for one year



and fine of Rs.5,000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

12. The High Court Legal Services Authority is directed to pay remuneration to the learned *Amicus Curiae* as per rules.

May 05, 2025
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(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |