



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
1278

CRA-S-1341-SB-2009 (O&M)
Date of decision: 13.05.2025

Mahavir
State of Punjab
Versus
....Appellant
....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Akhil Aggarwal, Advocate (*Amicus Curiae*)
for the appellant.

Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The prayer in the present appeal is to set-aside the judgment of conviction dated 11.05.2009 and order of sentence dated 15.05.2009 passed by learned Special Judge, Ferozepur whereby the appellant was convicted and sentenced for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘the NDPS Act’), in the case stemming from FIR No.127 dated 14.06.2003 registered under Section 18 of the NDPS Act at Police Station Sadar Abohar.
2. The appellant was found in possession 200 gms of Opium, for which he was convicted and sentenced as follows:

Offence	Sentence
Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 01 year and to pay fine of Rs.2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 01 month.



3. Learned *amicus curiae*, *inter alia*, contends that the learned trial Court has not given any weightage to the fact that the entire case of the prosecution is based upon the testimony of official witnesses. The Investigating Officer has not made any effort to join any independent witness during the course of investigation or at the time of alleged recovery. There is total non-compliance of Section 50 of the NDPS Act, which is mandatory. Further, the prosecution has miserably failed to prove its case beyond the shadow of reasonable doubt. The alleged recovery was made on 14.06.2003 whereas the representative sample was sent on 18.06.2023, beyond the stipulated time and as such, there is every likelihood of tampering with the representative sample. The appellant has already undergone a period of 02 months and 15 days in custody and is not involved in any other criminal case.

4. *Per contra*, learned State counsel opposes the prayer of the appellant on the ground that the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record 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 200 gms of Opium, i.e. intermediate quantity, attracting the offence of Section 18 of the NDPS Act, for which no minimum punishment has been prescribed. As per custody certificate, the appellant is not involved in any other case and has already undergone an actual sentence of 02 months and 15 days



out of total sentence of 01 year, in the instant case. Since there is no minimum punishment prescribed under Section 18 of the 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 Vs. 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, the 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 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 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. The FIR (supra) in the present case was registered on 14.06.2003 and the appellant has been suffering the agony of trial since the last more than 21 years. Since his conviction, the appellant has grown into a law-abiding citizen and desires to live a peaceful life.

9. Consequently, the present appeal is disposed of in the following terms:-

- (i) The judgment of conviction dated 11.05.2009 passed by the learned Special judge, Ferozepur is upheld.***
- (ii) The order of sentence dated 15.05.2009 is modified to the extent that the sentence of rigorous imprisonment for a period of 01 year and fine along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.***

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

11. All the pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

13.05.2025

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