



CRA-S-2352-SB-2007 (O&M)

1

**734 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRA-S-2352-SB-2007 (O&M)
Date of Decision: 07.04.2025**

KAMALJIT @ KAMAL

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Simran Atwal, Advocate as Amicus Curiae
with Mr. Arjun Kundra, Advocate as Legal Aid Counsel
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 09.08.2007 passed by learned Special Judge, Rupnagar 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 one year	Rs. 1,000/-	Rigorous imprisonment for two months

2. Brief facts of the case are that on 30.04.2005, ASI Piara Singh along with other police officials were present at bus stand of village Rashidpur at about 1.00 pm and informer gave secret information that Kamaljit Singh (appellant) deals in poppy husk and he is selling poppy husk near the Smadh of Baba on culvert of small canal of Daullpur. Finding the information to be reliable, raid was conducted and accused-appellant was found present at the spot mentioned above. On seeing the police party, the accused-appellant tried to run away but he was apprehended. Search of the appellant-accused along with his belongings was conducted. Thereafter, on search of plastic bag, carried by the

**CRA-S-2352-SB-2007 (O&M)****2**

appellant, poppy husk was recovered. Out of the poppy husk, two samples each of 250 grams were separated and remaining on weightment was found to be 7 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* assisted by learned Legal Aid Counsel for the appellant *inter alia* contends that the entire case of prosecution is based upon the testimonies of official witnesses and no independent witness was joined at the time of effecting the alleged recovery. There is non-compliance of Section 50 of NDPS Act and the recovery was not made in the presence of any Gazetted Officer. Further there is non-compliance of Section 42 of NDPS Act. The CFSL form was not prepared at the spot neither the same was deposited alongwith the case property with the MHC. Further, the appellant is not involved in any other case and has undergone a period of 06 months and 01 day of custody out of total sentence of 01 year 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 7.500 kilograms of poppy husk, attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. Appellant has already undergone custody of 06 months and 01 day out of total sentence of 01 year, in the instant case. Since there is no minimum punishment prescribed under Section 15 of NDPS Act, this Court is of the

**CRA-S-2352-SB-2007 (O&M)****3**

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 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)



CRA-S-2352-SB-2007 (O&M)

4

was lodged on 30.04.2005 and the appellant has been suffering the agony of trial for last almost 20 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 09.08.2007 passed by the learned Special Judge, Rupnagar is upheld.

(ii) The order of sentence dated 09.08.2007 is modified to the extent that the sentence of rigorous imprisonment for 01 year along with 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* only, as per rules.

(HARPREET SINGH BRAR)
JUDGE

07.04.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No