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433 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-324-SB-2007 (O&M)
Date of Decision: 20.05.2025

MAHENDER

...APPELLANT

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Nupur Sood, 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 19.12.2006/21.12.2006 passed by learned Special Judge, Faridabad vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
18 of NDPS Act	Rigorous imprisonment for five years	Rs. 25,000/-	Rigorous imprisonment for one year

2. Brief facts of the case are that on the fateful day, ASI Ram Avtar along with other police officials were present at Piyali Chowk in connection with patrolling duty, where they received a secret information that Mahender Singh (appellant) is going towards Saran Chowk via Sanjay Enclave Press Colony Road towards Mujessar carrying narcotic in large quantity and if *naka* is laid, then he can be apprehended. Finding the information to be reliable, *naka* was laid and after 25-30 minutes, a person was seen coming on foot from Press Colony side and he was going towards Saran Chowk side. On seeing, the police party, he turned back and started walking briskly. On the basis of suspicion, he



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was apprehended and upon his personal search, 200 grams of opium wrapped in a light pink colour polythene was recovered from the right side pocket of his pant. Two samples each of 10 grams were separated and the remaining opium was converted into separate parcels. All the parcels were sealed. FIR(*supra*) was registered under Section 18 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 prosecution has failed to prove its case beyond the shadow of reasonable doubt. Case of the prosecution is set up on the basis of secret information and the same was neither reduced into writing nor signed by any higher ranked official. As such, there is complete non-compliance of Section 42 of NDPS Act. Further, the statements of prosecution witnesses are discrepant with regard to arrival of the appellant and PW-7 Naresh Kumar has contradicted the case set up by the prosecution. Further the seal after use was handed over to HC Naresh Kumar and not to the independent witness. There are material contradictions and discrepancies in the testimonies of official witnesses and there is a delay in sending the representative sample to the office of chemical examiner. The appellant has undergone actual custody of 10 months and 19 days out of total sentence of 05 years awarded to him and he is not involved in any other case.

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 200 grams of opium, attracting the offence under

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Section 18 of NDPS Act, for which no minimum punishment has been prescribed. Perusal of custody certificate of the appellant indicates that he is not involved in any other case and has already undergone custody of 10 months and 19 days out of total sentence of 05 years, in the instant case. Since there is no minimum punishment prescribed under Section 18 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 23.09.2004 and the appellant has been suffering the agony of trial for last more than 20 years. Since his conviction, the appellant has reformed into a law-abiding citizen and intends to live a peaceful life.

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

(i) The judgment dated 19.12.2006 passed by the learned Special Judge, Faridabad is upheld.

(ii) The order of sentence dated 21.12.2006 is modified to the extent that the sentence of rigorous imprisonment for 05 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.

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

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

(HARPREET SINGH BRAR)
JUDGE

20.05.2025*Ajay Goswami**Whether speaking/reasoned**Whether reportable**Yes/No**Yes/No*