

437 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-355-SB-2007
Date of decision: 17.03.2025

BIRBAL SINGH @ BEERU AND ANR.

....Appellants

Versus

STATE OF HARYANA...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manpreet Singh, Advocate
for the appellants as Legal Aid Counsel.

Mr. Harkesh Kumar, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This appeal has been preferred against the judgment of conviction and order on quantum of sentence dated 23.01.2007/25.01.2007 passed by learned Addl. Sessions Judge, Sirsa whereby, the appellants were 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.65 dated 16.06.2003 registered at Police Station, Baragudha District Sirsa.

2. The appellants were sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 2 years each and to pay fine of Rs.2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months each.

3. Brief facts of the case are that on 16.06.2003 SI Daya Nand alongwith ASI Sarwan Kumar, HC Om Parkash and other police officials were going towards village Dhabban in Government Jeep No. HR-24D/6107, for patrolling and detection of crime. When they reached near Government High School situated on Dhabban Road, Baragurha, two persons were seen coming

from the side of village Dhabban riding on a scooter bearing Registration No.HR-24A/1133. SI conducted the search of the bag which was found to be containing 41 kgs of Poppy straw and the appellant No.2 was apprehended at the spot. After completing all the formalities as prescribed under NDPS Act, the FIR (supra) was registered.

4. Learned Legal Aid counsel for the appellants contends that the seals on the residue parcel were in broken condition. He further contends that the learned Court has not taken into consideration that no independent witness was made to join and only police officials were witnesses of the recovery even though there was a school nearby. Moreover, the mandatory provisions of Section 42, 50 and 57 of NDPS Act were not complied with and the onus was on the prosecution to prove so. Further, there is inconsistency in the statements given by the prosecution's witnesses and the FSL reports. Furthermore, as per the FSL report, the weight of the returned samples was recorded as 170 grams, whereas the weight of the samples received was 200 grams, which contradicts the weight mentioned in the recovery memo by the prosecution.

5. Per contra learned State counsel opposes the prayer made by the appellants on the ground that the appellants were rightly convicted by the learned trial Court as they had been found in conscious possession of alleged contraband . He produces the custody certificates dated 09.03.2025 in the Court today which are taken on record. Perusal thereof indicates that appellant No.1 - Birbal Singh has undergone actual sentence of 4 months and 8 days and is involved in one more case under the provisions of IPC, however he is on bail and appellant No.2 Baljinder Singh @ Jinder has undergone actual sentence of 5 months and 1 day and is involved in two more cases however in that case he has been released on bail.

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellants were convicted

for having in possession 41 kg. of poppy straw attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. As per their custody certificates appellant No.1 -Birbal Singh has undergone actual sentence of 4 months and 8 days and appellant No.2 Baljinder Singh @ Jinder has undergone actual sentence of 5 months and 1 day. 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 appellants is reduced to the period already undergone by them.

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. 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 16.06.2003 and the appellants have been suffering the agony of trial for last more than 21 years. Since their conviction, they have grown into a law-abiding citizen and desire 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 23.01.2007 passed by Additional Sessions Judge, Sirsa is upheld.

(ii) The order of sentence dated 25.01.2007 is modified to the extent that the sentence of rigorous imprisonment for 2 years each with fine of Rs. 2,000/- each along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by them.

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

12. High Court Legal Services Committee is directed to pay remuneration to learned Legal Aid Counsel for the appellants as per rules.

(HARPREET SINGH BRAR)
JUDGE

17.03.2025
mahima

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