



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
438

CRA-S No.359-SB-2007 (O&M)
Date of decision: 10.03.2025

Jagtar Singh and another

....Appellants

Versus

The State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sahilpreet Singh, Advocate (*Amicus Curiae*)
for the appellants.

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 17.01.2007 passed by learned Judge, Special Court, Bathinda whereby the appellants were convicted and sentenced for the offence punishable under Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'the NDPS Act'), in the case stemming from FIR No.117 dated 24.8.2003, under Section 15 of the NDPS Act at Police Station Dailpura.

2. The appellants were sentenced as mentioned below:

Offence	Sentence
Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 01 year each and to pay fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for 03 months each.

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3. Brief facts of the case are that on 24.08.2003, a police party headed by ASI Jagdish Kumar was on patrolling duty in the area of Village Maluka and when they reached on the bridge of a drain, they noticed that both the accused/appellants were sitting near the dry portion of the drain and the appellant – Jagtar Singh was found sitting on the bag containing something and the appellant – Jarnail Singh was standing nearby having a plastic mug in his hand. On seeing the police party, they tried to ran away from the spot, however, both of them were apprehended and recovery of 25.50 Kgs of Poppy Husk was effected from them and two samples of 25 grams were drawn from the bag and sent to the chemical examiner for its examination and subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae* submits that the learned Court below has fallen into grave error in convicting the appellants, as their guilt has not been proved beyond reasonable doubt. He contends that link evidence is completely missing and ASI Harbans Singh has deposed that he has handed over two sample parcels each containing 25 gms of Poppy Husk whereas SHO Des Raj, deposed that only one parcel containing 25 gms of Poppy Husk has been handed over to him. Further, there is a delay in dispatching the representative sample to chemical examiner as the alleged recovery has been made on 24.08.2003 whereas the representative sample was dispatched on 11.09.2003 and though one independent witness was joined in the investigation, however, he was not examined by the prosecution and the

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entire case of the prosecution is based upon the testimony of official witnesses. Lastly, he submits that the appellants have already undergone a period of 01 month and 25 days in custody and they are not involved in any other criminal case.

5. *Per contra*, learned State counsel opposes the prayer of the appellants 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, both the appellants do not deserve any leniency.

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 being in possession of 25.50 kgs of Poppy Husk, i.e. intermediate quantity, attracting the offence of Section 15 the NDPS Act, for which no minimum punishment has been prescribed. As per custody certificate, they are not involved in any other case and have already undergone an actual sentence of 01 month and 25 days out of total sentence of 01 year, in the instant case. Since there is no minimum punishment prescribed under Section 15 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 Court below indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, the FIR (supra) was registered on 24.08.2003 and the appellants have been suffering the agony of trial for the last about 22

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years. Since their conviction, both the appellants have grown into a law-abiding citizen and desires 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 of conviction dated 17.01.2007 passed by the learned Judge, Special Court, Bathinda is upheld.
- (ii) The order of sentence dated 17.01.2007 is modified to the extent that the sentence of rigorous imprisonment for a period of 01 year along and fine of Rs.10,000/- each with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.

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

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

(HARPREET SINGH BRAR)
JUDGE

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No