



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

Date of decision: 17.03.2025

1. CRA-S-41-SB-2007

JAGDISH SINGH

....Appellant

Versus

STATE OF PUNJAB

...Respondent

2. CRA-S-351-SB-2007

BINDER SINGH

....Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. H.S. Rakhra, Advocate and
Ms. Gurvinder Kaur, Advocate
for the appellant.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This order of mine shall dispose of both the above mentioned appeals as both are arising from the same FIR. For the sake of brevity, facts are borrowed from CRA-S-41-SB-2007 titled as Jagdish Singh Vs. State of Punjab.

2. These appeals have been preferred against the judgment of conviction and order of sentence dated 12.12.2006 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 'NDPS Act'), in the case



stemming from FIR No.95 dated 24.08.2004 at Police Station Sangat, District Bathinda.

3. 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 one year each and to pay fine of Rs.2,500/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months each.

4. Brief facts of the case are that on 24.08.2004, when ASI Shamsher Singh alongwith other police officials were present at crossing of Sangat and reached on bridge of drain in the area of village Dunewala, two persons were seen coming on scooter. On seeing the police party, they both tried to run away but during that process, scooter stood switched off and one bag lying between the two persons fell on the ground and its mouth stood open. Due to which, poppy husk became visible from the bag. On weighing, it came to be 07 kgs. Hence the FIR (*supra*) was registered.

5. Learned counsel for the appellants 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. It is contended that the mandatory provisions of the NDPS Act have not been followed and the link evidence is missing. Further, there was no investigation with regard to the source of alleged recovery and merely, the appellants were found sitting on the bag in a public place does not prove that the alleged contraband was recovered from the conscious and exclusive possession of the appellants. Further non-examination of independent witness is fatal to the case of prosecution. He further contends that he is not assailing the impugned judgment of conviction dated 12.12.2006 on



merits and restricts his prayer to modification of the order on quantum of sentence, to that of the sentence already undergone by the appellant(s), as they have already undergone for a period of 1 year and 6 days in custody (Jagdish Singh) and for a period of six months and three days in custody (Binder Singh) respectively and are not involved in any other criminal case.

6. *Per contra*, learned State counsel opposes the prayer of the appellant as the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record as such, they do not deserve any leniency.

7. 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 7 kgs of poppy husk attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. As per their custody certificate, they are not involved in any other case and have already undergone an actual sentence of 1 year 6 days (Jagdish Singh) and 6 months and 3 days (Binder Singh) out of total sentence of one year each. 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.

8. 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.

9. 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.

10. 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 24.08.2004 and the appellants have been suffering the agony of trial for last more than more than 20 years. Since their conviction, they have grown into a law-abiding citizen and desire to live a peaceful life.

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

(i) The judgment dated 12.12.2006 passed by learned Judge, Special Court, Bathinda is upheld.



(ii) The order of sentence dated 12.12.2006 is modified to the extent that the sentence of rigorous imprisonment for one year each with fine of Rs.2,500/- each along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.

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

13. A photocopy of this order be placed on the other connected case.

(HARPREET SINGH BRAR)
JUDGE

17.03.2025

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