



843

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-452-SB-2008
Date of decision: 08.04.2025

SUKHWINDER SINGH @ SUKHI

...APPELLANT

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Harshdeep Singh, Advocate
as *amicus curiae* for the appellant.
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 22.01.2008 passed by learned Judge, Special Court, Mansa, whereby the appellant was convicted and sentenced for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘NDPS Act’), in the case stemming from FIR No.39 dated 19.04.2002 under Section 18 of the NDPS Act at Police Station Sardulgarh.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of three years and to pay fine of Rs.1,000/- and in default of payment of fine, to further undergo RI for 06 months.

3. Brief facts of the case are that on 19.04.2002, SI Malkiat Singh along with other police officials and one independent witness Gurnam Singh was going from the side of village Jatana Kalan towards Village Rori, in connection with patrolling. When they covered a distance of about one



kilometer towards village Rori, they held *nakabandi* and the appellant along with co-accused were coming on a scooter mark 'Bajaj Chetak'. The scooter was being driven by the appellant. On suspicion, they both were apprehended. Upon search of appellant, 2.20 kgs of Opium was recovered from the *parna* tied around his waist, underneath his shirt. Subsequently, FIR (*supra*) was registered under Section 18 of the NDPS Act.

4. Learned *amicus curiae* for the appellant *inter alia* contends that the offer made by the investigating officer to the appellant under Section 50 of the NDPS Act is defective. Further, the story put forth by PW-1, namely, SI Malkiat Singh with regard to preparation of separate memos suffers from material irregularities. Furthermore, presence of ASI Darshan Singh is doubtful, who prepared all the memos at the spot, in view of the daily diary report Ex.D2 produced by the appellant in his defence. He submits that the independent witness, namely, Gurnam Singh, who was associated by the police party, has not been examined. He further submits that the entire case of the prosecution hinges upon the testimonies of official witnesses. Lastly, he submits that the appellant has already undergone total custody period of 08 months and 30 days, out of total sentence of three years, in the instant case and he is not involved in any other case.

5. *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, he does 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 appellant was



convicted for being in possession of 2.20 kgs of Opium, which falls under the purview of Section 18 of NDPS Act. As per his custody certificate, he has already undergone an actual sentence of 08 months and 30 days out of total sentence of three years, in the instant case. Since there is no minimum punishment prescribed under Section 18 of NDPS Act, for the non-commercial quantity 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.

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 19.04.2002 and the appellant has been suffering the agony of trial for last about 23 years. Since his conviction, he has 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 dated 22.01.2008 passed by the learned Judge, Special Court, Mansa is upheld.
- (ii) The order of sentence dated 22.01.2008 is modified to the extent that the sentence of rigorous imprisonment for three years and fine of Rs.1,000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

April 08, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |