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

CRA-S-599-SB-2007
Date of decision: 17.03.2025

BHANWAR SINGH @ PRABHU

....Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manvinder Sidhu, Advocate
for the appellant.

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 08.03.2007 passed by learned Sessions Judge, Sirsa whereby, the appellant was 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.157 dated 24.03.2004 registered at Police Station, Sirsa.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of one year and 1 year and six months and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

3. Brief facts of the case are that on 24.03.2004 a police party headed by Randhir Singh ASI apprehended accused/appellant Bhanwar Singh on suspicion in the presence of one Joginder Singh son of Darshan Singh in the area of city Sirsa when the accused was spotted carrying a plastic bag.

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Thereafter search of the bag was conducted which resulted in recovery of choora post. Two samples each weighing 100 gms were separated and the balance on weighment came out to be 7 kg. 900 gms. Samples and the residue choora post in the bag were sealed separately and taken in possession by the Police. Hence the FIR (supra) was registered.

4. Learned counsel for the appellant submits that the learned Court below has fallen into grave error in convicting the appellant, as his guilt has not been proved beyond reasonable doubt. It is contended that the mandatory provisions of Section 50 of the NDPS Act have not been followed and the link evidence is not reliable. Further no independent witness was joined and there are inherent improbabilities in the case of the prosecution. He further contends that he is not assailing the impugned judgment of conviction dated 08.03.2007 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, as he has already undergone a period of 03 months and 14 days in custody and is not involved in any other criminal 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 having in possession 8 kgs and 100 grams choora post attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate he is not involved in any other case

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and has already undergone a total sentence of 3 months and 14 days in custody. 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 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.

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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 24.03.2004 and the appellant has been suffering the agony of trial for last more than 21 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 08.03.2007 passed by learned Sessions Judge, Sirsa, is upheld.
>
> (ii) The order of sentence dated 08.03.2007 is modified to the extent that the sentence of rigorous imprisonment for One year and six months with fine of Rs.5,000/- along 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.

(HARPREET SINGH BRAR)
JUDGE

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

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