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CRA-S-606-SB-2007
Date of decision: 17.03.2025
Appellant

Versus

...Respondent

Present: Mr. Vikas Malik, Advocate for the appellant (amicus curiae).

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This appeal has been preferred against the judgment of conviction and order on quantum of sentence dated 03.03.2007 passed by learned Judge, Special Court, Sangrur whereby, the appellant was convicted and sentenced for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'NDPS Act'), in the case stemming from FIR No.114 dated 12.07.2005 registered at Police Station, Bhawanigarh under Section 20 of NDPS Act.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of two years and to pay fine of Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

3. Brief facts of the case are that on 12.07.2005 SI Kulwant Singh alongwith other police officials were going from Bhawanigarh to Balad Kalan in a Government Vehicle No.PB-12G-8347 in connection with patrolling. When the police party reached near the crossing of Balad Kalan in the revenue limits of Bhawanigarh, at about 4.15 P.M. they saw that one lady who was sitting on



the corner of Nabha Road, was putting some material in the small plastic envelopes. The said lady on seeing the police party stood up by holding the said envelopes at once. On suspicion, SI Kulwant Singh apprehended her with the help of lady constable Harpal Kaur. Total 270 gms smack recovered from her. Hence the FIR (supra) was registered.

4. Learned amicus curiae for the appellant contends that as per the report of the chemical examiner the content of the Dicytymorphin 45.80% which means the actual contents of alleged recovery is 125 gms and the same does not fall within the definition of commercial quantity. Further prosecution has joined one independent witness namely Gurwinder Singh at the time of raid and recovery but he has not been examined by the prosecution. Further the seal was not handed over to the independent witness and the appellant being a lady was not liable to be apprehended by the police party consisting of all male members, as such, one Constable Harpal Kaur was joined, however, she was not examined by the prosecution. Moreover, the signatures of lady constable have not been obtained on the recovery memo or the consent memo which indicates that there is total non compliance of Section 50 (4) of NDPS Act. The Investigating Officer did not prepare the CFSL form at the spot and he has not submitted the same with the MHC and there is a delay of 6 days in sending the sample parcel to Narcotic Control Bureau Investigation.

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 270 grams smack attracting the offences under Section 20 of NDPS Act, for minimum punishment has been prescribed. As per her custody certificate she are not involved in any other case and has already undergone a total sentence of 1 year, 8 months and 18 days in custody. Since there is no minimum punishment prescribed under Section 20 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 her.

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

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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 12.07.2015 and the appellant has been suffering the agony of trial for last more than 9 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 03.03.2007 passed by learned Judge, Special Court, Sangrur is upheld.
- (ii) The order of sentence dated 03.03.2007 is modified to the extent that the sentence of rigorous imprisonment for two years awarded to the appellant is reduced to the period of sentence already undergone by her.
- iii) Fine of Rs. 1,000/- imposed upon the appellant shall remain intact. The appellant is directed to deposit the amount fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the appellant shall be liable to be taken into custody and made to undergo simple imprisonment for one month.

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 amicus curiae as per rules.

(HARPREET SINGH BRAR)
JUDGE

17.03.2025

<i>mahima</i>	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No