

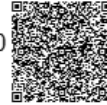
3. Brief facts of the case are that on 16.9.2004, ASI Ramesh Kumar along with other police officials were present at canal bridge Bhakhra in the area of Bhunderwas in connection with patrolling and crime checking. In the



meanwhile a person was seen coming from the side of village Rojhanwali having a plastic bag on his head, who on seeing the police party, turned back but he was apprehended by ASI Ramesh Kumar with the help of other officials. On interrogation, he disclosed his name as Pritam Singh son of Gurdev Singh, and on suspicion ASI Ramesh Kumar served a notice under Section 50 of the Act. Thereafter search of the bag of the accused/appellant was conducted and poppy husk was found in the same. Two samples of 100 grams each were separated out of the same and converted the same into parcels. The remainder on weighment was found to be 12 kilograms including the bag which was converted into sealed parcel. 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 27.01.2007 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 04 month and 26 days in custody and is not involved in any other criminal case.

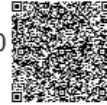
5. *Per contra*, learned State counsel opposes the prayer of the appellant as the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record as such, he does not deserve any leniency.



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 12 kgs 200 gms poppy husk attracting the offence under Section 15 of NDPS Act, for minimum punishment has been prescribed. As per his custody certificate, he is not involved in any other case and has already undergone an actual sentence of 4 months and 26 days out of total sentence of one year and six months, in the instant case. 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.

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 16.09.2004 and the appellant has been suffering the agony of trial for last more than 20 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 27.01.2007 passed by learned Additional Sessions Judge, Fatehabad, is upheld.

(ii) The order of sentence dated 27.01.2007 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

17.03.2025
mahima

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