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861 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-553-SB-2008 (O&M)
Date of Decision: 26.05.2025

HOSHIYARA SINGH ...APPELLANT

Versus

STATE OF HARYANA ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ritik Mohindroo, Advocate as *Amicus Curiae*
for the appellant.

Mr. Rishabh Singla, AAG Punjab.

Harpreet Singh Brar, J. (Oral)

1. Present appeal has been preferred by the appellant against the judgment of conviction and order on quantum of sentence dated 09.05.2007/10.05.2007 passed by learned Additional Sessions Judge (FTC), Hisar vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
20 of NDPS Act	Rigorous imprisonment for 04 years	Rs. 2,000/-	Rigorous imprisonment for 02 months

2. Brief facts of the case are that on 12.10.2003, Inspector Balbir Singh along with other police officials were present in official vehicle at Raipur road near Railway crossing for patrolling duty, where police party saw a person coming from G.T. Road while carrying a plastic bag of white colour in his right hand. On seeing the police party, he started walking briskly. On suspicion, he was apprehended by the police party and upon search of the bag carried by the appellant some material wrapped in a wax paper and Sulpha (charas) was recovered, which on weighment was found to be 380 grams, out of which two



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samples, of 05 grams each were separated and converted into separate parcels. All the parcels were sealed and FIR(supra) was registered under Sections 20/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act').

3. Learned *Amicus Curiae* for the appellant *inter alia* contends that entire case of prosecution hinges upon the testimonies of official witnesses. No independent witness was joined either at the time of effecting the alleged recovery of contraband or during the investigation, however the place of recovery was a thickly populated place, which is fatal to the case of prosecution. Further, there is a delay in sending the representative sample to the office of FSL, Madhuban as the alleged recovery was effected on 12.10.2003 and the sample was sent to the office of chemical examiner on 03.11.2003. Further, the FIR(supra) was registered even prior to effecting the said recovery, which is sufficient to suffocate the case of the prosecution. The appellant has undergone actual custody of 01 year 01 month and 29 days out of total sentence of 04 years awarded to him.

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

5. 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 380 grams of *charas*, attracting the offence under Section 20 of NDPS Act, for which no minimum punishment has been prescribed. Perusal of custody certificate of the appellant indicates that he is not involved in any other case and has already undergone custody of 01 year 01



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month and 29 days out of total sentence of 04 years, in the instant case. 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 him.

6. In **Deo Narain Mandal v. State of UP (2004) 7 SCC 257**, a three Judge bench of 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.

7. Further, a two Judge Bench of the Hon'ble Supreme Court in **Ravada Sasikala v. 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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8. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the said judgment is based on correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 12.10.2003 and the appellant has been suffering the agony of trial for last more than 21 years. Since his conviction, the appellant has reformed into a law-abiding citizen and intends to live a peaceful life.

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

(i) The judgment dated 09.05.2007 passed by the learned Additional Sessions Judge (Fast Track Court), Hisar is upheld.

(ii) The order of sentence dated 10.05.2007 is modified to the extent that the sentence of rigorous imprisonment for 04 years along with fine of Rs. 2,000/- with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

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

(HARPREET SINGH BRAR)
JUDGE

26.05.2025*Ajay Goswami**Whether speaking/reasoned*
*Whether reportable**Yes/No*
Yes/No