

482

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-679-SB-2007
Date of decision: 18.03.2025

Rajesh

....Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. T.P.S. Bawa, Legal Aid Counsel
for the appellant.

Mr. Harkesh Kumar, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the present appeal is to set aside the judgment of conviction dated 15.02.2007 and order of sentence dated 17.02.2007 passed by learned Sessions Judge, Fatehabad, 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.231 dated 18.08.2003, under Section 15 of the NDPS Act at Police Station City Tohana.

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 two years and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo simple imprisonment for three months.

3. Brief facts of the case are that on 18.08.2003, a police party headed by SI Ajaib Singh was on patrolling duty and when they were going from Brar Chowk, Tohana to bus stand, Tohana, they saw the appellant coming



from the side of bus stand with a plastic bag on his shoulder. The appellant was apprehended with 12 Kg of Poppy Husk and two samples of 100 grams each were drawn from the bag. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned legal aid counsel for the appellant *inter alia* contends that there are number of contradictions and discrepancies in the statements of the prosecution witnesses regarding number of seals and further, submits that as per report as Ex.PL, the Forensic Science Laboratory received the parcel bearing three seals, whereas, according to the Investigating Officer, he had put two seals on the sample and similar is the statement of ASI Chhatarpal Singh. He further submits that there is a delay in sending the representative sample to the Forensic Science Laboratory and the prosecution has failed to prove its case beyond reasonable doubt. Lastly, he submits that the appellant has already undergone a period of 01 year, 05 months and 03 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 being in possession of 12 kg of Poppy Husk, i.e. intermediate quantity, attracting the offence of Section 15 of the NDPS Act, for which no 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 01



year, 05 months and 03 days out of total sentence of 02 years, in the instant case. Since there is no minimum punishment prescribed under Section 15 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

**CRA-S-679-SB-2007****-4-**

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 18.08.2003 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 of conviction dated 15.02.2007 passed by the learned Sessions Judge, Fatehabad, is upheld.

(ii) The order of sentence dated 17.02.2007 is modified to the extent that the sentence of rigorous imprisonment for 02 years 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.

12. The High Court Legal Services Authority is directed to pay remuneration to the learned *Amicus Curiae*/Legal Aid Counsel, as per rules.

(HARPREET SINGH BRAR)
JUDGE

18.03.2025*Neha*

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