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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-681-SB-2007
Date of decision: 18.03.2025

Som Nath

....Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jivtesh Singh Nagi, 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 14.03.2007 and order of sentence dated 17.03.2007 passed by learned Additional 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.95 dated 05.08.2002, under Section 15 of the NDPS Act at Police Station Rori, District 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 two years and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo simple imprisonment for six months.

3. Brief facts of the case are that on 05.08.2002, a police party was on patrolling duty at Jatana Road, Rori, they saw a jeep bearing registration No.HR-44A/0692 coming from the side of village Rori and when ASI Jaswant

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Singh signalled the driver to stop the vehicle, he stopped at a distance of 20 steps and he along with the person sitting on the passenger seat, alighted from the vehicle and ran away. Third person who was sitting on the rear seat was nabbed by the police and he disclosed his name as Som Nath (the appellant herein). He also disclosed the names of the co-accused as Seeta and Gurdeep Singh. The appellant was apprehended with 40 Kg of Poppy Straw 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 on the same set of allegations both the co-accused, namely, Gurdeep Singh and Seeta Singh, have been acquitted and there is a delay of 16 days in dispatching the representative sample to FSL Madhuban. Further, the link evidence is missing in this case. PW-1-Constable, Sita Ram has deposed that the sealed sample was handed over to him on 20.08.2002 and he had deposited the same with the FSL Madhuban on 21.08.2002. As such, the possibility of tampering cannot be ruled out. The entire case of the prosecution depends on the deposition of the official witnesses. One Charanjit Singh was joined as independent witness, however, he has never been examined. Lastly, he submits that the appellant has already undergone a period of 05 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 being in possession of 40 kg of Poppy Straw, 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 05 months and 14 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 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 05.08.2002 and the appellant has been suffering the agony of trial for last more than 22 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 14.03.2007 passed by the learned Additional Sessions Judge, Sirsa, is upheld.

(ii) The order of sentence dated 17.03.2007 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.



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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