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487 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-698-SB-2007 (O&M)
Date of Decision: 18.03.2025

HARNEK SINGH

...APPELLANT

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gurbinder Singh Sidhu, *Amicus Curiae*
for the appellant.

Mr. Harkesh Kumar, AAG Haryana.

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 27.01.2007/29.01.2007 passed by learned Judge, Special Court, Gurgaon vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
15 of NDPS Act	Rigorous imprisonment for two years	Rs. 1,000/-	Rigorous imprisonment for two months

2. Brief facts of the case are that on 08.09.2005, ASI Raj Pal Singh along with other police officials were present in the area of village Islampur, Tehsil and District Gurgaon, in connection with patrolling duty. There, he received a secret information that the accused-appellant along with a bag containing Chura Post was standing at Rajiv Chowk, Gurgaon and waiting for some conveyance. On receipt of the said information, ASI Raj Pal Singh reached Rajiv Chowk, where he noticed the accused-appellant, who was giving signal to the vehicles proceeding towards Bilaspur to stop and nearby him, a bag was placed. On suspicion, appellant was apprehended and his identity was verified.

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On the basis of suspicion, search of the appellant-accused and his belongings was conducted. Thereafter, on search of the bag carried by appellant-accused, it was found to be containing ten polythene packets of *Chura Post*. Out of the said ten pockets, six were of 1 kilogram each and four of 2 kilograms each, out of which two samples of 200 grams each, were separated and the remaining *Chura Post*, were converted into another parcel. All the parcels were sealed. FIR(*supra*) was registered under Section 15 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 mandatory provisions of Section 50 of NDPS Act have not been complied with and partial option was given to the appellant. Statement of prosecution witnesses are contradictory and entire case of the prosecution hinges upon the testimonies of official witnesses and no independent witness was joined at the time of effecting the alleged recovery. Lastly, he submits that the appellant has already undergone a period of more than 01 year and 02 months out of total sentence of 02 years imposed upon 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, the appellant 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 14 kilogram of *chura post*, attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate, he has already undergone an actual sentence of 01 year 02 months and 09 days out of total sentence of 02 years, in

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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.

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 08.09.2005 and the appellant has been suffering the agony of trial for last more than 19 years. Since his conviction, he has grown into a law-abiding citizen and desires 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 27.01.2007 passed by the learned Judge, Special Court, Gurgaon is upheld.

(ii) The order of sentence dated 29.01.2007 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 him.

(iii) Fine of Rs. 1,000/- imposed upon the petitioner shall remain intact. The petitioner is directed to deposit the amount of 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 petitioner shall be liable to be taken into custody and made to undergo simple imprisonment for one month.

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

11. High Court Legal Services Committee is directed to pay remuneration to the *Amicus Curiae*, as per rules.

(HARPREET SINGH BRAR)
JUDGE

18.03.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No