

CRA-S-835-SB-2007 (O&M)1

505IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-835-SB-2007 (O&M)
Date of Decision: 27.03.2025

PALWINDER SINGH

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jagdeep Singh Bajwa, *Legal Aid Counsel*
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 09.02.2007 passed by learned Judge, Special Court, Gurdaspur vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
22 of NDPS Act	Rigorous imprisonment for 03 years	Rs. 10,000/-	Rigorous imprisonment for three months

2. Brief facts of the case are that on 23.06.2004, AI SI Gurmej Singh along with other police officials were present near the turning of village Sollapur, where he joined Bachan Singh Numberdar with the police party. In the meantime, at about 7.00 PM, accused-appellant was seen coming from the side of Kahnuwan, who on seeing the police party, tried to escape but was apprehended. Thereafter, having suspected some intoxicated material, personal search of the appellant was conducted and from the pocket of the trouser worn by him 71 grams of smack was recovered, which was wrapped in a polythene bag. One sample of 05 grams was separated and remaining on weighment was

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found to be 66 grams. All the parcels were sealed. FIR(*supra*) was registered under Section 22 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 there is total non compliance of Section 50 of NDPS Act and the alleged recovery has not been made in the presence of a Gazetted Officer or a Magistrate, and entire case of the prosecution hinges upon the testimonies of official witnesses. One independent witness was joined, but he was not examined by the prosecution. The alleged recovery was effected on 23.06.2004 and the sample was sent after a delay of 7 days to the Forensic Science Laboratory. There are major discrepancies in the statements of PW-5 and other material witnesses with regard to recovery. Lastly he submits that the appellant is not involved in any other case and has undergone 03 months and 26 days of custody out of total sentence of 03 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, 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 71 grams of smack, attracting the offence under Section 22 of NDPS Act, for which no minimum punishment has been prescribed. Custody certificate indicates that appellant has already undergone custody of 03 months and 26 days out of total sentence of 03 years, in the instant case. Since there is no minimum punishment prescribed under Section 22 of



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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.

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

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correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 23.06.2004 and the appellant has been suffering the agony of trial for last more than 20 years.

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

(i) The judgment dated 09.02.2007 passed by the learned Judge, Special Court, Gurdaspur is upheld.

(ii) The order of sentence dated 09.02.2007 is modified to the extent that the sentence of rigorous imprisonment for 03 years and fine of Rs. 10,000/- 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 Committee is directed to pay remuneration to the Legal Aid Counsel, as per rules.

(HARPREET SINGH BRAR)
JUDGE

27.03.2025*Ajay Goswami**Whether speaking/reasoned*
*Whether reportable**Yes/No*
Yes/No