

CRA-S-2151-SB-2009 (O&M)1

203IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-2151-SB-2009 (O&M)
Date of Decision: 27.03.2025

TARSEM SINGH @ SEMI

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Roopse Sharma, Advocate as *Amicus Curiae*
for the appellant.

Mr. Subhash Godara, Addl. A.G., 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 12.08.2009 passed by learned Judge, Special Court, Mansa 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 01 year	Rs. 1,000/-	Rigorous imprisonment for three months

2. Brief facts of the case are that on 16.03.2005, a police party headed by ASI Gurdip Singh, on official Gypsy No. PB-31-6417 in connection with patrolling duty reached at bus stand Chehlanwali, where, PW Sulakhan Singh met the police party and was associated with it. Thereafter, the police party was going from the side of Chehlanwali towards village Dhingarh and when it reached on the link road at a distance of about 01 km behind the village Dhingarh, accused-appellant was sighted coming from the opposite direction carrying a plastic bag in his hand. On seeing the police party, the accused tried to turn towards the adjoining wheat fields, but on suspicion he was apprehended.

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His identity was verified and on the basis of suspicion, search of the appellant-accused along with his belongings was conducted. Thereafter, on search of plastic bag, held by the appellant, poppy husk was recovered. Out of the bulk of poppy husk, one sample of 100 grams was separated and remaining on weighment was found to be 19.900 kilograms. Both 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 the entire case of the prosecution hinges upon the testimonies of official witnesses. One Sulakhan Singh was associated as independent witness during the course of investigation, but he was not examined by the prosecution. Recovery of Rs.10/- from the personal search of the appellant, falsify the story of the prosecution, whereas the village of the appellant is situated at 25 kilometres away from the place of recovery. Further, PW-3 Surinder Singh has not deposed regarding the submission of the sample seal along with the case property and there is a delay in sending the representative sample to the Forensic Science Laboratory. Further, the appellant is not involved in any other case and has undergone around 03 months and 22 days of custody out of total sentence of 01 year 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 20 kilograms of poppy husk, attracting the offence

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under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. Appellant has already undergone custody of around 03 months and 22 days out of total sentence of 01 year, in 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

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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 correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 16.03.2005 and the appellant has been suffering the agony of trial for last more than 20 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 12.08.2009 passed by the learned Judge, Special Court, Mansa is upheld.

(ii) The order of sentence dated 12.08.2009 is modified to the extent that the sentence of rigorous imprisonment for 01 year and fine of Rs. 1,000/- 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 *Amicus Curiae*, as per rules.

(HARPREET SINGH BRAR)
JUDGE

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