1307 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-2203-SB-2009 (O&M)
Date of Decision: 14.05.2025

PIARA SINGH **...APPELLANT**

Versus

STATE OF PUNJAB **...RESPONDENT**

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shivam Kapila, Advocate as *Amicus Curiae* for the appellant.

Mr. Nitesh Sharma, DAG Punjab.

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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 01.09.2009 passed by learned Judge, Special Court, Patiala 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 one year six months	Rs. 5,000/-	Rigorous imprisonment for one month

2. Brief facts of the case are that on 17.03.2005, ASI Jaswinder Singh along with other police officials were going on Amloh Road in connection with patrolling duty, where the appellant-Piara Singh was seen coming from a canal side carrying one plastic bag, who on seeing the police party, became nervous and tried to retreat. On the basis of suspicion, he was apprehended and his name and address was verified. On the basis of suspicion, personal search of the appellant as well as the bag carried by him, was conducted and upon search of said bag, poppy husk was recovered. Out of the total quantity of poppy husk, two samples each of 100 grams were separated and the remaining poppy husk

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on weighment was found to be 19.500 kilograms. 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 Curia*e for the appellant *inter alia* contends that appellant has been falsely implicated in the present case and the entire case of the prosecution is based upon the testimonies of official witnesses and no independent witness was joined during the course of investigation or at the time of effecting the alleged recovery. Further, there is total non-compliance of Section 55 of NDPS Act as the SHO concerned has neither taken charge of the case property nor direction was issued to the Investigating Officer to produce the same before the Court concerned. Thus, the link evidence is missing in the prosecution story. Further the CFSL form was neither filled up at the spot, nor the same was deposited with the MHC along with the case property. Further there is delay in sending the representative sample to the office of chemical examiner. The appellant has undergone custody period of 02 months and 23 days.

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. Moreover, the appellant is also involved in one more case under the Excise Act. Thus, he is not entitled to any relief by this Court.

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 19.700 kilogram of poppy husk, attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. Perusal of custody certificate of the appellant indicates that he has

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already undergone custody of 02 months and 23 days out of total sentence of 01 year 06 months, 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 strike a balance between the efficacy of law and the chances of reformation of the accused.

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8. Further, the primary consideration in matters where the petitioner/appellant is involved in other NDPS cases ought to be the severity of the offence. Moreover, Co-ordinate benches of this Court have deemed it appropriate to reduce the sentence imposed upon the accused to be the custody already undergone by them, in spite of their involvement in other cases pertaining to the NDPS Act in ***Pritam Singh @ Preeti vs. State of Punjab*** *in* ***CRA-S-1769-SB-2010*** *decided on 03.04.2025,* ***Ram Lal vs. State of Haryana****in****CRA-S-986-SB-2005*** *decided on 11.05.2018*, ***Raj Pal vs. State of Haryana****in****CRA-S-68-SB-2005*** *decided on 28.04.2023,* ***Raj Pal vs. State of Haryana****in****CRA-S-34-SB-2005*** *decided on 28.04.2023*and***Gurmail Singh and others vs. State of Punjab*** *in* ***CRA-S-1976-SB-2007*** *decided on 28.03.2025*

9. 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 17.03.2005 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 intend 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 dated 01.09.2009 passed by the learned Judge, Special Court, Patiala is upheld.

(ii) The order of sentence dated 01.09.2009 is modified to the extent that the sentence of rigorous imprisonment for 01 year 06 months along with fine of Rs. 5,000/- 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.

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12. High Court Legal Services Authority is directed to pay remuneration to learned *Amicus Curiae* as per rules.

(HARPREET SINGH BRAR)
JUDGE

14.05.2025
Ajay Goswami

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*

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