



CRA-S-2210-SB-2009 (O&M)

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1308 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-2210-SB-2009 (O&M)
Date of Decision: 14.05.2025

PREM NATH

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Isha Dhingra Advocate as *Amicus Curiae*
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 18.08.2009/19.08.2009 passed by learned Special Court under the NDPS Act, Jalandhar 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(b) of NDPS Act	Rigorous imprisonment for three years	Rs. 5,000/-	Rigorous imprisonment for two months

2. Brief facts of the case are that on 09.12.2005, SI/SHO Des Raj alongwith other police officials were present at T-point of Mehsumpur-Shekupura Road in connection with patrolling duty, where at about 4.15 pm appellant-Prem Nath came driving a scooter. On seeing the police party, he became perplexed and tried to turn back but nabbed on suspicion by the police party 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

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poppy husk, two samples each of 250 grams were separated and the remaining poppy husk on weighment was found to be 34.500 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 Curiae* for the appellant *inter alia* contends that there exists a total non-compliance of mandatory provisions of Section 50 of NDPS Act as offer given to the appellant was defective. Further, at the time of alleged recovery of contraband, no independent witness was joined and there is a delay of 12 days in sending the representative sample to the office of chemical examiner. Lastly, it is contended that provisions of Sections 52 and 55 of NDPS Act are also not complied with by the police party. The appellant has undergone custody of 05 months and 28 days and he is not involved in any other case.

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 35 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 is not involved in any other case and has already undergone custody of 05 months and 28 days out of total sentence of three years, 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.

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 09.12.2005 and the appellant has been suffering the agony of trial



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for last more than 19 years. Since his conviction, the appellant has reformed into a law-abiding citizen and intends 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 18.08.2009 passed by the learned Special Court under NDPS Act, Jalandhar is upheld.

(ii) The order of sentence dated 19.08.2009 is modified to the extent that the sentence of rigorous imprisonment for 03 years 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.

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
Whether reportable

Yes/No
Yes/No