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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1387-SB-2010
Date of decision:21.04.2025
..Petitioner

SEEMA

Versus

STATE OF PUNJAB ..Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amritpal Singh Maan, Legal Aid Counsel
for the petitioner.

Mr. Rishabh Singla, AAG, Punjab and
Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR, (ORAL).

1. The prayer in the present appeal is to set aside the judgment of conviction and order of sentence dated 13.05.2010 passed by learned Special Court, Jalandhar, whereby the appellant was convicted and sentenced for the offence punishable under Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘NDPS Act’), in the case stemming from FIR No.29 dated 02.03.2005, under Section 21 of the NDPS Act at Police Station Phillaur.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, PS Phillaur	Rigorous imprisonment for a period of 1 and a half years and to pay fine of Rs.500/- and in default of payment of fine, to further undergo RI for 4 months.



3. Brief facts of the case are that on 01.03.2005 when ASI Rachhpal Singh along with other police officials was going to Adda Nurmahal, he received a secret information about the accused that she is in the habit of selling smack. Naka was held, and she was apprehended. Upon search of plastic bag, 250 grams of smack was recovered. Subsequently, FIR (supra) was registered under Section 21 of the NDPS Act.

4. Learned Legal Aid Counsel for the appellant inter alia contends that Mr. Yash Pal Ginda, Municipal Commissioner of the area was joined as independent witness, however he was not examined as prosecution witness during the course of trial. The entire case of the prosecution is based upon the testimony of the official witnesses. Further the case property was not produced during the course of the trial. As such the link evidence in the prosecution case is missing. There is total non-compliance of mandatory provisions of the NDPS Act and the testimony of HC Harjinder Pal Singh is totally contradictory to the prosecution story. Lastly, he submits that the appellant has already undergone total custody period of 7 months and 14 days, out of total sentence of 1 year and 6 months, in the instant case and she is not involved in any other case.

5. Per contra, learned State counsel opposes the prayer of the appellant as the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record as such, she does not deserve any leniency.

6. 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 250 gms of smack, which falls under the purview of Section 21 NDPS Act. As per her custody certificate, she has already undergone an actual sentence of 7 months and 14 days out of total sentence of



1 year and 6 months, in the instant case. Since there is no minimum punishment prescribed under Section 21 NDPS Act, for the non-commercial quantity 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 her.

7. In ***Deo Narain Mandal vs. State of U.P. (2004) 7 SCC 257***, 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.

8. Further, the Hon'ble Supreme Court in ***Ravada Sasikala vs. 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.



9. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 02.03.2005 and the appellant has been suffering the agony of trial for last more than 20 years. Since her conviction, she has grown into a law-abiding citizen and desires 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 13.05.2010 passed by the learned Special Court, Jalandhar is upheld.

(ii) The order of sentence dated 13.05.2010 is modified to the extent that the sentence of rigorous imprisonment for 1 and a half year and fine of Rs.500/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by her.

11. The High Court Legal Services Authority is directed to pay remuneration to the learned Legal Aid Counsel as per rules.

21.04.2025

Poonam

(HARPREET SINGH BRAR)
JUDGE

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