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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-1190-SB-2011 (O&M)
Date of Decision: 06.03.2025

GURCHARAN SINGH @ CHARAN SINGH

1
...Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Vamika Johar, Advocate
for the appellant.

Mr. Nitesh Sharma, DAG 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 06.04.2011 passed by learned Judge, Special Court, Sri Muktsar Sahib 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 two years	Rs. 5,000/-	Rigorous imprisonment for six months

2. Brief facts of the case are that on 04.05.2004, a police party headed by ASI Sawinder Pal Singh along with other police officials were on a private vehicle, present on the bridge of Semnulla in the area of village Khema Khera, in connection with special nakabandi, then one cyclist was found coming from the side of village, Khema Khera carrying a plastic satchel in his cycle tide with the rubber tube. He was apprehended on suspicion with the help of police officials and enquired about his whereabouts. Upon search of the accused-appellant's bag, it was found containing poppy husk, out of which 250 grams of poppy husk was separated as sample and converted into a parcel. On



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weighment, the remaining poppy husk came to be of 19 kilograms 750 grams.

Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

3. Learned counsel for the appellant *inter alia* contends that prosecution has miserably failed to prove its case beyond the shadow of reasonable doubt and no independent witness was joined by the prosecution which lends no credence to the case set up by the prosecution. The case property was not produced before the Illaqa Magistrate as there was no seal of jurisdictional Court. Further, the case property was not deposited with the concerned Station Head Officer and seal was handed over to Gunman of Deputy Superintendent of Police and there is a delay of 20 days in sending the representative sample to the Forensic Science Laboratory. It was further argued that CFL form was not filled up at the spot. Learned counsel further submits that the appellant has already undergone a period of 06 months and 19 days out of total sentence of two years imposed upon 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 KG of poppy husk, attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. As per his custody certificate, he is not involved in any other case and has already undergone an actual sentence of 06 months and 19 days out of total sentence of 02 years, in the instant case. Since there is no minimum



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

(i) The judgment dated 06.04.2011 passed by the learned Judge, Special Court, Sri Muktsar Sahib is upheld.

(ii) The order of sentence dated 06.04.2011 is modified to the extent that the sentence of rigorous imprisonment for 02 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.

10. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

06.03.2025*Ajay Goswami**Whether speaking/reasoned*
*Whether reportable**Yes/No*
Yes/No