



CRA-S-965-SB-2008 (O&M)

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936 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-965-SB-2008 (O&M)
Date of Decision: 26.05.2025

NAHAR SINGH

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Samanpreet Kaur, 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 05.05.2008 passed by learned Judge, Special Court, Barnala 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	Rs. 1,000/-	Rigorous imprisonment for two months

2. Brief facts of the case are that on 19.02.2005 ASI Balbir Singh along with other police officials were on patrolling duty and were proceeding from village Deep Garh towards village Talewal via the Canal path. When the police party reached the canal bridge on the outskirts of village Deep Garh, then Dalip Singh was associated in the police party. Thereafter, police proceeded further on the *katcha* path leading towards village Ram Garh. On the canal bridge, appellant Nahar Singh was seen coming on the scooter from the side of village Ram Garh. On seeing the police party, he got perplexed and at once tried to turn back his scooter. However, he was apprehended and on the basis of

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suspicion, his personal search along with search of the plastic bag lying on the base of his scooter was conducted, which was found to be containing 17 kilograms of poppy husk. Two samples of 250 grams each were separated from the bulk of poppy husk. All the parcels were sealed and FIR was registered under Sections 15 and 25 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 one independent witness namely Dalip Singh was joined by the Investigating Agency at the time of effecting the alleged recovery, however, he was not produced during the course of trial by the prosecution, rather he appeared as DW-1 and negated the case set up by the prosecution. Further there is non-compliance of Section 50 of NDPS Act. Admittedly, CFSL form was neither filled up at the spot, nor the same was deposited with the MHC along with the case property. Further, owner of the scooter, Harbhajan Singh was acquitted during the trial and as such it would not be safe to convict the appellant solely on the basis of testimonies of official witnesses only, which is not corroborated by any independent witness. The appellant has undergone actual custody of 03 months and 13 days 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 as such, he 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 17 kilograms of poppy husk, attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been



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prescribed. Perusal of custody certificate of the appellant indicates that he is not involved in any other case and has already undergone custody of 03 months and 13 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 19.02.2005 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 05.05.2008 passed by the learned Judge, special Court, Barnala is upheld.

(ii) The order of sentence dated 05.05.2008 is modified to the extent that the sentence of rigorous imprisonment for 01 year along with 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 Authority is directed to pay remuneration to learned *Amicus Curiae* as per rules.

(HARPREET SINGH BRAR)
JUDGE

26.05.2025*Ajay Goswami**Whether speaking/reasoned**Whether reportable**Yes/No**Yes/No*