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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-1195-SB-2012 (O&M)
Date of Decision: 04.02.2025

Darshan Singh alias Kala

Versus

...Appellant

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parvez Chugh, Advocate and
Mr. Himanshu Setia, Advocate for the appellant.

Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This appeal has been preferred against the judgment of conviction and order on quantum of sentence dated 12.03.2012 passed by the learned Judge, Special Court, Sri Muktsar Sahib in case bearing FIR No.149 dated 17.06.2006 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Lambi, District Sri Muktsar Sahib, vide which the appellant, had been convicted.

2. The appellant was sentenced as under:

Offence u/s	Sentence	Fine	In default of payment of fine
15 of the NDPS Act	To undergo RI for 01 year & 06 months.	Rs.5000/-	To undergo RI for a period of 03 months.

3. Brief facts of the case are that on 17.06.2006, a police party headed by ASI Harjinder Singh having other police officials on a private jeep, in connection with patrol duty, was going on metaled road from village, Sikhwala to village, Bhitiwala, Kandhu Khera etc. and when the police party reached near the area of village, Roranwali, then one tractor make Eicher of

red colour with its trolley was found parked near the tree and face of the tractor was towards village, Kakhanwali and one person was found consuming, something while putting on his palm by means of water from the hand pump. On seeing the police party, the accused-appellant got nervous and he sat down behind the tractor. On suspicion, the I.O. got halted the jeep and the accused-appellant was apprehended and inquired his whereabouts. The left hand of the accused-appellant was found smeared with poppy husk and one plastic bag was lying in the trolley and its mouth was open and poppy husk was very much visible in it. The I.O. told the accused-appellant that he suspected some contraband in his possession and the search of the tractor trolley is to be conducted by apprising him that he has legal right for the search in the presence of some Gazetted officer or a Magistrate. In the meanwhile, per chance Rabbi Singh independent witness resident of village, Lambi came there and he was joined in the police party. In response of option given by the I.O. to the accused-appellant, the accused-appellant reposed confidence in the I.O., who prepared the consent memo of the accused-appellant, which was attested by HC Darshan Singh, independent witness Rabbi Singh and signed by the accused-appellant. Scale and weights were arranged by the I.O. Thereafter, on search, poppy husk was recovered from the plastic bag lying in the trolley and out of which 250 grams of poppy husk was separated as sample and converted into a parcel. On weighment, the remaining poppy husk came to be of 16 kilograms 750 grams of poppy husk and it was converted into another parcel. Both the parcels were sealed by the I.O. with his seal bearing impression HS. Specimen seal chit was prepared and the seal after use was handed over to HC Darshan Singh and then I.O. took the case property into possession vide separate recovery memo, attested by HC Darshan Singh and Rabbi Singh. Driving license of the accused-appellant and RC of the tractor as well as

vehicles i.e. tractor and trolley were also taken into police possession. Personal search of the accused-appellant was conducted and a sum of Rs.20/- were recovered and the same were taken into possession. Ruqa was sent to the Police Station and on the basis of which formal FIR was registered by ASI Sukhdev Singh. The accused-appellant was arrested and grounds of arrest were disclosed to him. Intimation memo regarding the arrest of the accused-appellant was also prepared. Rough site plan was prepared by the I.O. at the spot. All the memos were attested by the same set of witnesses. Statements of the witnesses were recorded. Thereafter, on receipt of the report of the Chemical Examiner and completion of the investigation, challan against the accused-appellant was presented in the Court.

4. The appellant was convicted and sentenced vide judgment of conviction and order of sentence dated 12.03.2012 passed by the learned Judge, Special Court, Sri Muktsar Sahib.

5. Learned counsel for the appellant, while filing affidavit of appellant in compliance of the order dated 08.01.2024 passed by the coordinate Bench of this Court, contends that he is not assailing the impugned judgment of conviction dated 12.03.2012 on merits and restricts his prayer to modification of the order on quantum of sentence dated 12.03.2012 to that of the sentence already undergone by the appellant. Appellant has undergone a total period of 01 month and 22 days custody after conviction. He further submits that appellant is not involved in any other case.

6. *Per contra*, learned State counsel opposes the prayer of the appellant as 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.

7. I have heard learned counsel for the parties and perused the record

with their able assistance.

8. 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. 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.
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. Moreover, learned counsel for the appellant has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua modification of quantum of sentence.

10. The FIR in the present case was lodged on 17.06.2006 and the appellant has been suffering the agony of protracted trial for last about 18 years. Since his conviction, the appellant has grown into law-abiding citizen and desire to live a peaceful life. As per his custody certificate, he is not involved in any other case and has undergone total sentence of 01 month and 22 days out of total sentence of 01 year and 06 months, in the instant case.

11. Accordingly, 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.

12. Consequently, the present appeal is disposed of in the following terms:-

(i) The judgment of conviction dated 12.03.2012 passed by the learned Judge, Special Court, Sri Muktsar Sahib is upheld, however, the order of sentence dated 12.03.2012 is modified to the extent that the sentence of rigorous imprisonment for 01 year and 06 months along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

(ii) Fine of Rs.5000/- imposed upon the appellant is enhanced to Rs.10,000/-. The appellant is directed to deposit the amount of fine in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the appellant shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

04.02.2025

Parveen kumar

(HARPREET SINGH BRAR)
JUDGE

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