

CRA-S-1662-SB-2010 (O&M)
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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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BHAGIRATH

CRA-S-1662-SB-2010 (O&M)
Date of Decision: 06.03.2025
...Appellant

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Raghav Goyal, Advocate (*Legal Aid Counsel*)
for the appellant.

Mr. Rahul Dev, Addl. AG Haryana.

Harpreet Singh Brar, J. (Oral)

1. The prayer in the present appeal is to set aside the judgment of conviction and order of sentence dated 07.07.2010/08.07.2010 passed by learned Additional Sessions Judge, Fast Track Court, Hisar whereby the appellant was convicted and sentenced for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘NDPS Act’) (wrongly written as Section 50 in the judgment of conviction dated 07.10.2010) in the case stemming from FIR No.836 dated 13.11.2007, under Section 15/61/85 of the NDPS Act at Police Station City Hisar.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of three years and to pay fine of Rs.20,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months.

3. Brief facts of the case are that on 13.11.2007, a police party headed by ASI Suresh Kumar was on patrolling duty at Bus Stand, Hisar when he saw the petitioner sitting near the water tap of Bus stand carrying a black coloured

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bag. The petitioner was apprehended with 09 KG and 500 grams of Poppy Husk in the presence of one Mahabir and two samples of which were drawn from the bag. The samples of 100g each were then sent to the chemical examiner who confirmed the contents to be '*Chura* Poppy Heads'. Subsequently, FIR (*supra*) was registered under Section 15/61/85 of the NDPS Act.

4. Learned Legal Aid Counsel submits that there is non-compliance of Section 50 of NDPS Act and no offer was made to the appellant, who was found to have been carrying two bags of poppy husk. Further, the entire case of the prosecution rests upon the testimony of official witnesses and no independent witness from the public was joined by the authorities and there is a delay of 06 days in sending the representative sample to the Forensic Science Laboratory, which creates a dent on the case set up by the prosecution and the link evidence is missing. Lastly, he submits that the appellant has already undergone a period of 01 month and 14 days in custody and is not involved in any other criminal 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, he 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 09 kg 500 grams of Poppy Husk, attracting the offence of Section 15 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 01 month and 14 days out of



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punishment prescribed under Section 15 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.

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



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lodged on 13.11.2007 and the appellant has been suffering the agony of trial for last about 17 years. Since his conviction, he 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 07.07.2010 passed by the learned Additional Judge, Fast Track Court, Hisar is upheld.

(ii) The order of sentence dated 08.07.2010 is modified to the extent that the sentence of rigorous imprisonment for 03 years along with fine of Rs. 20,000/- 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. The High Court Legal Services Authority is directed to pay remuneration to the learned Legal Aid Counsel as per rules.

(HARPREET SINGH BRAR)
JUDGE

06.03.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No