

CRA-S-2601-SB-2009 (O&M)1

1320IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-2601-SB-2009 (O&M)
Date of Decision: 14.05.2025

NAZAR SINGH...APPELLANT

Versus

STATE OF HARYANA...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Manisha Singh, Advocate as *Amicus Curiae*
for the appellant.

Mr. Harkesh Kumar, AAG Haryana.

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 07.09.2009/08.09.2009 passed by learned Special Judge, Ambala vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
21 of NDPS Act	Rigorous imprisonment for three years	Rs. 2,000/-	Imprisonment for three months

2. Brief facts of the case are that on 21.09.2004, ASI Balbir Singh alongwith other police officials were present near Manji Sahib Gurudwara, GT Road, Ambala City in connection with patrolling duty, where they received a secret information that Nazar Singh (appellant herein) was present in the motor market Ambala City and he will go towards Jogiwara side and if *naka* is laid at T-point G.T. Road, near Mangat Ram Ahata, then he can be caught red handed with narcotic substance. Believing the information to the reliable, *naka* was laid and a person was seen coming from GT Road side. On the basis of suspicion, he was apprehended and his name and address was verified. On the basis of

**CRA-S-2601-SB-2009 (O&M)****2**

suspicion, personal search of the appellant was conducted and 30 grams of smack wrapped in a polythene bag was recovered from the right pocket of his pant, out of which, two samples of 5 grams each were separated. All the parcels were sealed. FIR(*supra*) was registered under Section 21 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 learned trial Court has fallen into grave error by convicting the appellant after ignoring major contradictions in the prosecution evidence and during investigation one independent witness namely Sumit Kumar was joined, however he was not examined by prosecution for the reasons best known to them. The alleged recovery was effected on 21.09.2004, however, the representative sample was sent to the office of chemical examiner on 27.09.2004 and the said delay of 06 days in sending the representative sample to the office of chemical examiner is sufficient to suffocate the entire case of the prosecution. Further, the seal after use was not handed over to the independent witness, rather it was handed over to ASI Ram Jawari and there is total non-compliance of Section 50 of NDPS Act.

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. Moreover, the appellant is also involved in one more case. As such, he is not entitled to any relief by this Court.

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 30 grams of smack, attracting the offence under

**CRA-S-2601-SB-2009 (O&M)****3**

Section 21 of NDPS Act, for which no minimum punishment has been prescribed. Appellant has already undergone custody of 11 months and 18 days out of total sentence of three years, in the instant case. Since there is no minimum punishment prescribed under Section 21 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

**CRA-S-2601-SB-2009 (O&M)****4**

strike a balance between the efficacy of law and the chances of reformation of the accused.

8. Further, the primary consideration in matters where the petitioner/appellant is involved in other NDPS cases ought to be the severity of the offence. Moreover, Co-ordinate benches of this Court have deemed it appropriate to reduce the sentence imposed upon the accused to be the custody already undergone by them, in spite of their involvement in other cases pertaining to the NDPS Act in *Pritam Singh @ Preeti vs. State of Punjab* in **CRA-S-1769-SB-2010** decided on 03.04.2025, *Ram Lal vs. State of Haryana* in **CRA-S-986-SB-2005** decided on 11.05.2018, *Raj Pal vs. State of Haryana* in **CRA-S-68-SB-2005** decided on 28.04.2023, *Raj Pal vs. State of Haryana* in **CRA-S-34-SB-2005** decided on 28.04.2023 and *Gurmail Singh and others vs. State of Punjab* in **CRA-S-1976-SB-2007** decided on 28.03.2025

9. 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 21.09.2004 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.

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

- (i) The judgment dated 07.09.2009 passed by the learned Special Judge, Ambala is upheld.
- (ii) The order of sentence dated 08.09.2009 is modified to the extent that the sentence of rigorous imprisonment for 03 years along with fine of Rs. 2,000/- with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.



CRA-S-2601-SB-2009 (O&M)

5

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

12. High Court Legal Services Authority is directed to pay remuneration to learned *Amicus Curiae* as per rules.

(HARPREET SINGH BRAR)
JUDGE

14.05.2025
Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No