



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-152-SB-2011 (O&M)

Date of Decision: 23.01.2025

Mahendro

..... Appellant

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Parminder Singh Sekhon, Advocate for the appellant.

Mr. Kiran Pal Singh, AAG, Haryana for the respondent.

MAHABIR SINGH SINDHU, J.

Present appeal has been preferred against the impugned judgment of conviction and order of sentence dated 04.01.2011, passed by learned Special Court, Panipat, whereby appellant was convicted under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (*for short 'NDPS Act'*) and sentenced to undergo rigorous imprisonment for a period of 04 years along with fine of ₹ 20,000/-; with a default clause to further undergo simple imprisonment for 03 months in FIR No.211 dated 04.06.2006, registered at Police Station Samalkha, District Panipat.



(2) In brief, the case of prosecution is that on 04.06.2006, appellant was found in conscious possession of 20 Kg. of *Poppy Husk* while carrying a plastic *katta* (bag) on her head. A Notice under Section 50 of the NDPS Act was served upon the appellant, whereby she was apprised about her right to get search conducted through some Magistrate or Gazetted Officer. However, she reposed faith in Investigating Officer S.I. Satbir Singh. The contraband was sealed and seized. After completion of investigation, final report under Section 173 of the Code of Criminal Procedure, 1973 (*for short* 'Cr.P.C.') was presented before learned Special Court and copy of the same, along with documents, was supplied to the appellant free of costs under Section 207 Cr.P.C. She was charge-sheeted for the commission of offence punishable under Section 15 of the NDPS Act, to which, appellant pleaded not guilty and claimed trial.

(2.1) In order to prove the charge, prosecution examined 08 witnesses, namely, Constable Sanjeev Kumar (PW-1), S.I. Bijender Kumar (PW-2); Satish Kumar Yadav, Tehsildar, Panipat (PW-3); Ram Niwas, Additional Ahlmad (PW-4); HC Suresh Kumar (PW-5); S.I. Satbir Singh, Investigating Officer (PW-6); EHC Shamsheer Singh (PW-7) and Constable Jai Pal (PW-8). One PW, namely, Constable Narender was given up being unnecessary.

(2.2) Statement of appellant was recorded under Section 313 Cr.P.C., wherein, she denied the allegations levelled against her and pleaded innocence.

(2.3) In her defence, appellant examined Constable Subhash Chander as DW-1 and closed her evidence.



(2.4) Learned Special Court, after hearing both sides and taking into consideration the material on record, convicted the appellant for an offence punishable under Section 15 of the NDPS Act and sentenced in the manner, as described in first paragraph of this order.

(2.5) Hence, the present appeal.

(3) At the outset, learned Counsel for the appellant, on instructions, does not press the conviction; rather submits that keeping in view her deteriorating health condition, a lenient view be taken on the quantum of sentence. Learned Counsel also submits that alleged contraband i.e. 20 Kg. of *Poppy Husk* (non-commercial) is stated to have been recovered from the appellant wayback on 04.06.2006 and as on today, she is more than 70 years of age; thus, being bed-ridden, virtually entered in the last days of her life.

(3.1) Further contends that out of total sentence of 04 years, the appellant has already undergone actual sentence of 01 year and 14 days.

(3.2) Lastly contends that she has no source of income and as such, the amount of fine be also reduced.

(4) On the other hand, in compliance of order dated 15.01.2025, learned State Counsel has produced a report dated 22.01.2025 of Head Constable Gurjant Singh, Police Station City-I, Sangrur along with Pen Drive, depicting health condition of appellant. As the material produced by above Head Constable would be of an utmost relevancy for proper adjudication of the matter in controversy; therefore, this Court, while exercising power under



Section 391 of the Code of Criminal Procedure, 1973 (Section 432 of the Bharatiya Nagarik Suraksha Sanhita, 2023), deems it appropriate to allow the same to be taken on record as Mark 'X' (*colly.*).

So ordered.

Registry to do the needful.

(4.1) Although, learned State Counsel, on instructions from quarter concerned, acknowledged the factum of age as well as health condition of the appellant; but he opposed the prayer for reduction of sentence and/or fine on the premise that appellant is a previous convict under NDPS Act.

(5) Heard parties and perused the records carefully.

(6) Of course, learned Counsel for the appellant has not assailed the conviction; but this Court has examined the entire material on record. The testimony of PW-6 S.I. Satbir Singh (Investigating Officer) is fully corroborated by EHC Shamsher Singh (PW-7), giving a vivid and clear picture regarding sequence of events, thereby proving conscious possession of contraband from the appellant. Nothing beneficial to the appellant could be elicited during the cross-examination of aforesaid prosecution witnesses to shake their credit.

(7) In defence, the appellant examined Constable Subhash Chander as DW-1, who had brought Register No.19, relating to the case property. This register contained proper entry regarding return of the case property after it was tested from FSL, Madhuban. Even delay of 05 days in sending the sample to



FSL, Madhuban would be of no help to the appellant in view of the fact that sample parcel was not tampered with.

(8) Hon'ble the Supreme Court in Criminal Appeal No.1953 of 2014, decided on 16.01.2025, titled as **“Rakesh Kumar Raghuvanshi Versus The State of Madhya Pradesh”**, has recently dealt with the term *“conscious possession”* in the following manner:-

“14. Thus, before the Court holds the accused guilty of the offence under the NDPS Act, possession is something that the prosecution needs to establish with cogent evidence. If the accused is found to be in possession of any contraband which is a narcotic drug, it is for the accused to account for such possession satisfactorily, if not, the presumption under Section 54 comes into place.

15. Section 54 of the NDPS Act being relevant in the context on hand is extracted hereunder for convenient reference:

“54. Presumption from possession of illicit articles. — In trials under this Act, it may be presumed, unless and until the contrary is proved, that the accused has committed an offence under this Act in respect of —

- (a) any narcotic drug or psychotropic substance or controlled substance;*
- (b) any opium poppy, cannabis plant or coca plant growing on any land which he has cultivated;*
- (c) any apparatus specially designed or any group of utensils specially adopted for the manufacture of any narcotic drug or psychotropic substance or controlled substance; or*
- (d) any materials which have undergone any process towards the manufacture of a narcotic drug or*



psychotropic substance or controlled substance, or any residue left of the materials from which any narcotic drug or psychotropic substance or controlled substance has been manufactured, for the possession of which he fails to account satisfactorily.”

16. *Therefore, as envisaged by the provision itself, unless and until the contrary is proved in trials of cases involving offences coming within the purview of the NDPS Act, it may be presumed that the accused has committed an offence under the Act in respect of any articles prohibited to be possessed by him and for the possession of which, he failed to account satisfactorily. Therefore, it is the burden of the prosecution to establish that the contraband was seized from the conscious possession of the accused. Only when that aspect has been successfully proved by the prosecution, the onus will shift to the accused to account for the possession legally and satisfactorily.”*

(9) In the present case, prosecution has been able to establish its case regarding conscious possession of the appellant and as such, the presumption under Section 54 of the NDPS Act, will be attracted, unless the contrary is proved. As the appellant has failed to rebut the presumption in terms of Section 54 (*ibid*); therefore, the finding recorded by learned Special Court regarding her conscious possession does not warrant interference by this Court.

(10) So far as the quantum of sentence is concerned, Hon’ble the Supreme Court in “**Surinder Singh Versus State (Union Territory of**



Chandigarh)", (2021) 20 SCC 24 discussed in detail regarding "doctrine of proportionality", *inter alia*, as under:-

- "34. The equality of ratio between two sets of variables is now well known as the doctrine of proportionality. The bedrock of sentencing policy in our criminal justice system is also based on the axiom of proportionality. This principle of commensurate sentencing treats offenders as agents capable of evaluating their own illegal conduct and the social censure associated with it, which is communicated to them by imposing a proportionate sentence. The exercise for assessing 'proportionality' is thus dependent upon the gravity of the offence which is determined according to - (a) mischief caused or risk involved in the offence; (b) the overall conduct of the offender and; (c) motives ascribed to the felon. Further, the equality of treatment so as to eliminate discriminatory practices in the award of sentencing, is integral to the canons of proportionality. Needless to say, the guarantee of even-handedness before the law(s), as enshrined in Article 14 of our Constitution, encompasses the administration of criminal justice system as well.*
- 35. Having said that, we cannot be incognizant of the fact that there are practical difficulties in achieving absolute consistency in regards to sentencing. It must be candidly acknowledged that there is an element of discretion present while adjudicating the issue of sentence, however, the same cannot be exercised in an unprincipled manner. This Court has explicitly ruled out the practice of awarding disproportionate sentences, especially those that showcase undue leniency, for it would undermine the public confidence in efficacy of law.*
- 36. The sentencing policy, therefore, keeps pace with changing time. Undoubtedly, the primary emphasis while deciding the quantum of sentence should lie on the gravity or penal value of the offence. However, other guiding elements of rehabilitative justice model, including, appreciation of grounds for mitigation of sentence also deserve to be duly considered within the permissible limits of judicial discretion. The awarding of just and proportionate sentence remains the solemn duty of the courts and they should not be swayed by non-relevant factors while deciding the quantum of sentence. Naturally, what factors should be considered as 'relevant' or 'non-relevant' will depend on the facts and*



circumstances of each case, and no straightjacket formula can be laid down for the same.”

(11) In the case in hand, it transpires that appellant is a previous convict in FIR No.4 dated 10.01.2009, under Section 15 of the NDPS Act, registered at Police Station Sadar, District Sangrur, wherein she was convicted and sentenced under Section 15 of the NDPS Act to undergo rigorous imprisonment for a period of 01 month by learned Special Court, Sangrur; but she has already undergone that sentence.

(12) However, at this juncture, sending the appellant to undergo remaining imprisonment would not serve any purpose, due to the following mitigating factors:-

- (i) *recovery alleged against the appellant is of intermediate quantity and there is no minimum sentence prescribed under the NDPS Act for such an offence;*
- (ii) *appellant was sentenced to undergo for a period of 04 years and out of that, she has already undergone the actual sentence of more than 01 year;*
- (iii) *she is more than 70 years of age and it is clearly discernible from Mark 'X' (colly.) that her health condition is very critical;*
- (iv) *appellant has already suffered the ordeal of protracted trial since 2006 and moreover, sentence ought to be “just” as well as “proportionate to the gravity of offence”;*
- (v) *she is a poor lady, having no source of income; thus, it would be very difficult for her to pay the fine of ₹ 20,000/-.*

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(13) Considering the above facts and circumstances, this Court is of the considered opinion that conviction of the appellant be maintained; but in the interest of justice, her sentence be reduced to the period already undergone.

(14) Ordered accordingly.

(15) Still further, the fine of ₹ 20,000/- is also reduced to ₹ 1,000/- and the same be deposited before learned Special Court/Chief Judicial Magistrate/Duty Magistrate concerned, within three months from receipt of certified copy of this order.

(16) As the appellant is stated to be on bail; therefore, her bail bonds and surety bonds stand discharged.

(17) Case property, if any, be disposed off as per rules, after expiry of the period for appeal.

(18) Disposed off accordingly.

Pending application(s), if any, shall also stand disposed off.

23rd January, 2025
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No