250 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1555-SB-2012
Date of decision: 25.03.2025

BAL KISHAN

...APPELLANT

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Naveen Sharma Moudgil, Advocate and
Mr. Vijay Lath, Advocate for the appellant.

Mr. Nitesh Sharma, DAG, Punjab.

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HARPREET SINGH BRAR, J. (ORAL)

1. The prayer in the present appeal is to set aside the judgment of conviction dated 02.02.2012 and order of sentence dated 06.02.2012 passed by learned Judge, Special Court, Jalandhar, whereby the appellant was convicted and sentenced for the offence punishable under Sections 22(a) and 22(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), in the case stemming from FIR No.122 dated 30.08.2010 registered under Section 22 of NDPS Act at Police Station Division No.5, Jalandhar.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 22 (a) of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of **03 months** and to pay fine of Rs.500/- and in default of payment of fine, to further undergo RI for 15 days.
Section 22 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of **03 years** and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo RI for 01 month.
It was ordered that both the sentences shall run concurrently.	

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3. Brief facts of the case are that on 30.08.2010, SI Sarabjit Singh of Anti Narcotic Cell of Police, Jalandhar along with another police official held *nakabandi* at Daldal Chowk, Jalandhar, upon receiving a tip-off to the effect that appellant was habitual of selling intoxicants and if raid is conducted, he can be nabbed with large quantity of psychotropic drugs and capsules. As such, appellant, carrying plastic bag, was seen coming and was apprehended. Upon search of plastic bag, 5040 Spasmo Proxyvon capsuls, 912 Proxyvon capsuls, 800 Proxyvon Spas capsules, 240 Enpam-10 tablets, 770 Alprazolm-05 tablets, 70 Rexcof vials, 1900 Momolit tablets and 3400 Woktil tablets were recovered. Subsequently, FIR *(supra)* was registered under Section 22 of the NDPS Act.

4. Learned Counsel for the appellant submits that he is not assailing the impugned judgment of conviction dated 02.02.2012 passed by learned Judge, Special Court, Jalandhar on merits and restricts his prayer to modification of the order on quantum of sentence dated 06.02.2012 to that of sentence already undergone by the appellant. As per his custody certificate, the appellant has undergone a period of 01 year, 10 months and 25 days of actual custody, out of total sentence of three years.

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. He further submits that the appellant is involved in one more case under the NDPS Act.

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellant was

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convicted for being in possession of small quantity of psychotropic substances i.e. Nitrazepam, Alprazolam and Codeine and intermediate quantity of Dextroproposyphene and Diphoexylate, which falls under the purview of Section 22 of NDPS Act. As per his custody certificate, the appellant has already undergone actual custody period of about 01 year, 10 months and 25 days, out of total sentence of three years, in the instant case. Since there is no minimum punishment prescribed under Section 22 NDPS Act, for the non-commercial quantity 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

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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. However, the FIR (*supra*) was lodged on 30.08.2010 and the appellant has been suffering the agony of trial for last more than 14 years. Since his conviction, he has grown into law-abiding citizen and desires to live a peaceful life.

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

(i) The judgment dated 02.02.2012 passed by the learned Judge, Special Court, Jalandhar is upheld.

(ii) The order of sentence dated 06.02.2012 is modified to the extent that the sentence of rigorous imprisonment for three years and fine of Rs.5,000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

(HARPREET SINGH BRAR)
JUDGE

March 25, 2025
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(i) Whether speaking/reasoned Yes/No

(ii) Whether reportable Yes/No

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