



CRA-S-2923-SB-2009 (O&M)

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1332 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-2923-SB-2009 (O&M)
Date of Decision: 14.05.2025

DEVENDER AND ANOTHER

...APPELLANTS

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. H.N. Sahu, Advocate
for the appellants.

Mr. Harkesh Kumar, AAG Haryana.

Harpreet Singh Brar, J. (Oral)

1. The prayer in the present appeal is to set aside the judgment of conviction and order on quantum of sentence dated 30.10.2009/09.11.2009 passed by learned Special Judge, Rohtak whereby the appellants were convicted and sentenced for the offence punishable under Section 20(b)(ii)(A) of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act') in the case stemming from FIR No. 172 dated 02.07.2007 registered at Police Station Sadar Rohtak.

2. The appellants were sentenced for keeping in their possession 950 grams of *charas*, as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
20(b)(ii)(A)	Rigorous imprisonment for 06 months each	Rs. 10,000/- each	Simple imprisonment for 01 month each

3. Learned Counsel for the appellants submits that he is not assailing the impugned judgment of conviction dated 30.10.2009 passed by learned Special Judge, Rohtak on merits and restricts his prayer to modification of the order on quantum of sentence dated 09.11.2009 to that of sentence already

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undergone by the appellants-Devinder and Rakesh, as they have already undergone a period of 03 months and 01 day; and 02 months and 28 days respectively out of total sentence of 06 months each imposed upon them.

4. Per contra, learned State counsel opposes the prayer of the appellants on the ground that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, the appellants do not deserve any leniency.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellants were convicted for being in their possession 950 grams of *charas*, attracting the offence under Section 20(b)(ii)(A) of NDPS Act, for which no minimum punishment has been prescribed. As per their custody certificates, they are not involved in any other case and have already undergone a period of 03 months and 01 day; and 02 months and 28 days respectively out of total sentence of 06 months each imposed upon them. Moreover, learned counsel for the appellants has not assailed the judgment of conviction on merits. Rather, he has restricted his prayer only qua modification of order on quantum of sentence. Since there is no minimum punishment prescribed under Section 20(b)(ii)(A) of NDPS Act, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the appellants is reduced to the period already undergone by them.

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

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

8. 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 02.07.2007 and the appellants have been suffering the agony of trial for last almost 18 years. Since their conviction, they have grown into a law-abiding citizens and desires to live peaceful lives.

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

- (i) The judgment dated 30.10.2009 passed by the learned Special Judge, Rohtak is upheld.



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(ii) The order of sentence dated 09.11.2009 is modified to the extent that the sentence of rigorous imprisonment for 06 months each along with fine of Rs. 10,000/- each with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.

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

(HARPREET SINGH BRAR)
JUDGE

14.05.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No