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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2079-SB-2006

Date of decision: 07.03.2025

Baldev Singh

....Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Rupahshi Soni, Advocate
for the appellant.

Mr. Rishabh Singla, AAG, Punjab.

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 13/16.10.2006 passed by learned Special Judge, Ferozepur, 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’), in the case stemming from FIR No.135 dated 09.08.2003, under Section 15 of the NDPS Act at Police Station Mamdot.
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 one year and to pay fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months.

3. Brief facts of the case are that on 09.08.2003, a police party headed by ASI Lakhwinder Singh was proceeding from Mamdot towards villages, Jodhpur, Chapati etc on the scooters while on patrolling when they saw



the appellant coming from western side on the northern pavement of the canal minor carrying a bag on his head. The appellant was apprehended with 10 Kg of Poppy Husk and two samples of 250 grams each were drawn from the bag and sent to the chemical examiner. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned counsel for the appellant submits that the learned Court below has fallen into grave error in convicting the appellant, as his guilt has not been proved beyond reasonable doubt. She contends that the learned Court has not taken into consideration that CFSL Form-29 has not been filled on the spot. Moreover, the fact that the appellant was in conscious possession of the contraband has not been proved on record. Further, there is no independent witness available and the whole case is based upon the testimonies of the official witnesses which shows that the entire paper work was done by the police officials while sitting in their office and no such recovery was effected. She further contends that the mandatory provisions of the NDPS Act have not been followed in the present case. Lastly, she submits that the appellant has already undergone a period of 01 month and 07 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 10 kg of Poppy Husk, i.e. intermediate quantity, 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 07 days out of total sentence of 01 year, in the instant case. Since there is no minimum 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

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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 09.08.2003 and the appellant has been suffering the agony of trial for last more than 21 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 13.10.2006 passed by the learned Special Judge, Ferozepur is upheld.

(ii) The order of sentence dated 16.10.2006 is modified to the extent that the sentence of rigorous imprisonment for 01 year with fine along 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.

(HARPREET SINGH BRAR)
JUDGE

07.03.2025*Neha*

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No