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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2960-SB-2009
Date of decision:21.04.2025

MOHINDER SINGH AND ANR. ..Appellants

Versus

STATE OF HARYANA ..Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jagjit Gill, Advocate and
Mr. Sandeep Sharma, Legal Aid Counsel
for the appellants.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, (ORAL).

1. The prayer in the present appeal is to set aside the judgment of conviction dated 26.11.2009 and order of sentence dated 01.12.2009 passed by learned Additional Sessions Judge, Sirsa whereby the appellants were convicted and sentenced for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as ‘NDPS Act’), in the case stemming from FIR No.67 dated 26.04.2007 registered under Sections 17/18 of NDPS Act at Police Station Nathusarai Chopta, Sirsa.
2. The appellants were sentenced for keeping in his possession 1Kg and 120 grams of opium, as mentioned below:

Offence	Sentence
Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985.	Rigorous imprisonment for a period of 18 months each and to pay fine of Rs.5000/- each and in default of payment of fine, to further undergo SI for 2 months.



3. Brief facts of the case are that on 26.4.2007 ASI Ram Kumar was present on T-point Jorkian for patrolling and crime checking in the meantime two persons seen coming on a motor cycle from the side of village Nithana and on seeing the police party they tried to turn back the motor cycle and on suspicion they were overpowered with motor cycle No. HR-24G-9053. On enquiry they disclosed their names to be Mohinder Singh s/o Ram Singh and Jagdish s/o Hari Singh both residents of village Nithana, Distt. Hanumangarh. Upon giving notice for search they opted their search before some Gazetted Officer and they were taken to Naib Tehsildar, Nathusari Chopta alongwith motor cycle and on search of plastic bag which Jagdish was having in his hand 1 kgs and 120 gms opium was recovered. Hence, the present case was registered by the police.

4. Learned counsel for the appellants submits that the motorcycle in question from which the alleged recovery has been shown was impounded under the provisions of Motor Vehicles Act by ASI on 26.04.2007 at 8.00 am and recovery from the same motor cycle has been shown at 9.45 am on the same day. This fact is very much clear from the document EX.D2. The seal after use was handed over to police official instead of the independent witness as per the prosecution story at the time of alleged recovery of the contraband. This major dent in the prosecution story raised fingers towards the recovery of the contraband in the present case. There is every apprehension of tampering of the samples in the present case since there is a delay of more than 15 days



in sending the samples to FSL, Madhuban. This fact raised fingers towards the intactness of the samples since the seal was with the police officials in the present case. There is non-compliance of mandatory provisions of NDPS Act at the time of alleged recovery. The statement of the SHO was not recorded u/s 161 CrPC by the investigating officer. These facts create doubts towards the truthfulness of the prosecution story. Learned counsel for the appellants submits that the trial Court has wrongly convicted the appellants. Keeping in view the discrepancies in the testimony of the official witnesses by the trial Court while deciding the present case, the appellants are entitled to the order of acquittal in the present case.

4. Per contra, learned State counsel opposes the prayer of the appellants as the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record as such, they does 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 possession of 1 Kg and 120 grams of opium, which falls under the purview of Section 18 of NDPS Act. As per the custody certificate, the appellant-Jagdish has undergone a period of 5 months and 2 days and and appellant-Mahender Singh has undergone a period of 5 months out of total sentence of 18 months, in the instant case. Since there is no minimum punishment prescribed under Section 18 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 appellants is reduced to the period already undergone by them.

6. ***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.

7. 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 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 same is based on correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 26.04.2007 and the appellants have been suffering the agony of trial for last about 18 years. Since their conviction, they have grown into law-abiding citizen and desires to live a peaceful life.

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

(i) The judgment dated 26.11.2009 passed by the learned Additional Sessions Judge, Sirsa is upheld.

(ii) The order of sentence dated 01.12.2009 is modified to the extent that the sentence of rigorous imprisonment for 18 months and fine of Rs.5,000/- each along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.

10. The High Court Legal Services Authority is directed to pay remuneration to the learned Legal Aid Counsel as per rules.

21.04.2025

Poonam

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No