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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2197-SB-2006

Date of decision: 07.03.2025

Seeto

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Sushma Suma, Amicus Curiae
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 03.11.2006 passed by learned Judge, Special Court, Sangrur, 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.475 dated 01.12.2003, under Section 15 of the NDPS Act at Police Station Sunam.

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 two months and to pay fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

3. Brief facts of the case are that on 01.12.2003, a police party headed by ASI Vijay Kumar was on patrolling duty and when they were heading from village Cheema towards village Jakhepal, they saw the appellant

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coming on foot having a child in her lap and also holding a *jhola* plastic in her left hand. The appellant was apprehended with 04 Kg of Poppy Husk and two samples of which were drawn from the bag. The samples of 250 gram each were then sent to the chemical examiner. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae inter alia* contends that the appellant was apprehended without joining any lady constable at the time of search and there is a violation of the provision under Section 50(4) of the NDPS Act. The seal after use was not handed over to the independent witness and further there is a delay in sending the representative samples for analysis. She further submits that the case set up by the prosecution is highly improbable and it has not been duly proved whether PW-5 was working as a Station House Officer at the time of alleged recovery. Lastly, she submits that the appellant has already undergone a period of 01 month and 02 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, she 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 04 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 her custody certificate, she is not involved in any other case and has already undergone an actual sentence of 01



month and 02 days out of total sentence of 02 months, 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 her.

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 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.



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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 01.12.2003 and the appellant has been suffering the agony of trial for last more than 21 years. Since her conviction, she 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 03.11.2006 passed by the learned Judge, Special Court, Sangrur is upheld.

(ii) The order of sentence dated 03.11.2006 is modified to the extent that the sentence of rigorous imprisonment for 02 months along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by her.

(iii) The sentence of fine of Rs.500/- imposed upon the appellant by the learned Court below shall remain intact. The appellant is directed to deposit the said amount in the trial Court within one month from the date of receipt of certified copy of this order. In case of default of payment of fine, the appellant shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

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

12. The High Court Legal Services Authority is directed to pay remuneration to the learned *Amicus Curiae* as per rules.

(HARPREET SINGH BRAR)
JUDGE

07.03.2025

Neha

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