



1337 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3127-SB-2009
Date of decision: 15.05.2025

KULWANT SINGH

...APPELLANT

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Gurpreet Kaur, Advocate as *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 14.12.2009 passed by learned Judge, Special Court, Mansa, 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.40 dated 16.04.2006 under Section 15 of the NDPS Act at Police Station Jhunir.

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.1,000/- and in default of payment of fine, to further undergo RI for three months.

3. Brief facts of the case are that on 16.04.2006, when SI Gurdev Singh along with other police officials was going from the side of village Jhunir by associating PW Jagsir Singh and reached near channel (*kassi*),



appellant was sighted under a tree and a plastic bag was lying near him. On seeing the police, he tried to slip. On suspicion, he was apprehended. Upon search of plastic bag, 20 kgs of Poppy Husk was recovered. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae* for the appellant *inter alia* contends that the prosecution has miserably failed to prove the conscious possession of the appellant over the alleged contraband. She further contends that the alleged contraband was recovered from a plastic bag lying in the open field, which was accessible to all and merely because the appellant was present there would not prove his conscious possession over the same. Furthermore, the entire case of the prosecution hinges upon the testimonies of the official witnesses and the independent witness joined at the time of investigation has not been produced before the learned trial Court for his examination during the course of trial. She submits that PW-2 HC Ganja Ram has admitted in his cross-examination that the plastic bag was lying at a distance of half *karam* from the appellant and the ownership of the field is not proved. She further submits that there is complete non-compliance of Section 57 of the NDPS Act. Lastly, she submits that the appellant has already undergone total custody period of 02 months and 14 days, out of total sentence of one year, in the instant case and he is not involved in any other 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 20 kgs of Poppy Husk, which falls under the purview of Section 15 of NDPS Act. As per his custody certificate, he has already undergone a period of 02 months and 14 days out of total sentence of one year, in the instant case. Since there is no minimum punishment prescribed under Section 15 of 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



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 16.04.2006 and the appellant has been suffering the agony of trial for last more than 19 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 14.12.2009 passed by the learned Judge, Special Court, Mansa is upheld.
- (ii) The order of sentence of dated 14.12.2009 is modified to the extent that the sentence of rigorous imprisonment for one year and fine along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

May 15, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |