

CRA-S-313-SB-2009 (O&M)1

201IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-313-SB-2009 (O&M)
Date of Decision: 10.03.2025

KULWANT SINGH ALIAS KANTA

...APPELLANT

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. P.S. Jammu, Advocate
for the appellant.

Mr. Vikas Bhardwaj, Addl. AG Haryana.

Harpreet Singh Brar, J. (Oral)

1. Present appeal has been preferred by the appellant against the judgment of conviction and order on quantum of sentence dated 24.01.2009/30.01.2009 passed by learned Additional Sessions Judge, Sirsa vide which the appellant has been convicted and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
15 of NDPS Act	Rigorous imprisonment for six months	Rs. 5,000/-	Simple imprisonment for one months

2. Brief facts of the case are that on 09.08.2005, when police party headed by ASI Rattan Singh along with other police officials present at T-point Madho Singhana in the area of village Mallekan, in Government Vehicle No. HR-24-F-8624, were on patrolling duty then one Dalpreet Singh resident of Village Mallekan came there and when the Investigating Officer was talking with said Dalpreet Sigh, one person was noticed coming from the side of village Malwani, carrying a plastic bag on his head. On seeing the police party, he turned back and started walking swiftly. On suspension, he was apprehended by the police party. He disclosed his name as Kulwant Singh (petitioner herein).

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Upon search of accused-petitioner, poppy straw was recovered from his bag. Two samples, each weighing 100 grams, were separated from the poppy-straw and were converted into separate sealed parcels. The remaining poppy straw was found to be 20 KG on weighment. Subsequently, FIR(*supra*) was registered under Section 15/16 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act').

3. 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. He contends that the learned Court has not taken into consideration that Form-29 has not been filled on the spot. Further, there was also an unexplained delay in sending the sample of the alleged contraband to the Forensic Science Laboratory. Further, there are major discrepancies in the statements of the witnesses who have been examined by the prosecution. He further contends that the mandatory provisions of the NDPS Act have not been followed in the present case. Lastly, he submits that the appellant has already undergone a period of 02 months and 20 days of custody and is not involved in any other criminal case.

4. Per contra, learned State counsel opposes the prayer of the appellant 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 appellant 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 appellant was convicted for being in possession of 20 kilograms of poppy straw, attracting the offence under Section 15 NDPS Act, for which no minimum punishment has been prescribed.



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already undergone an actual sentence of 02 months and 20 days out of total sentence six months, in the instant case. Since there is no minimum punishment prescribed under Section 15 of 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.

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 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.

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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.

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

(i) The judgment dated 24.01.2009 passed by the learned Additional Sessions Judge, Sirsa is upheld.

(ii) The order of sentence dated 30.01.2009 is modified to the extent that the sentence of rigorous imprisonment for six months along with fine of Rs. 5,000/- with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

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

(HARPREET SINGH BRAR)
JUDGE

10.03.2025*Ajay Goswami**Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*