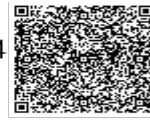
**CRA-S-2023-SB of 2012 (O&M) 2**

proved beyond reasonable doubt. The FIR(supra) was lodged on the basis of secret information received by the Investigating officer, however, the same was not conveyed to higher officials as mandated by Section 42 NDPS Act. Further, there was a delay of 09 days in sending the sample of the alleged contraband to be sent to the FSL. Even the *malkhana* register was not produced by the prosecution. Further still, the alleged contraband was seized at 3:30 PM and at 4:30 PM, a report was sent for registration of FIR(supra). However, the seizure memo already bore the details of the FIR(supra), which was registered subsequently, at 5:15 PM. Additionally, PW2- ASI Bahadur Singh has categorically stated in his cross-examination that the notice under Section 50 NDPS Act was served after the DSP arrived at the spot. In fact, the DSP has not been examined by the prosecution. Finally, no independent witness has been joined in the investigation either.

4. *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.

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 1.80 kg of opium, i.e. intermediate quantity, which falls under the purview of Section 18(c) NDPS Act. As per his custody certificate, he is not involved in any other case and has already undergone actual sentence of 10 months and 23 days out of total sentence of 03 years, in the instant case. Since there is no minimum punishment prescribed under Section 18(c) NDPS Act, this Court is of the opinion that it would be in the in-

**CRA-S-2023-SB of 2012 (O&M) 3**

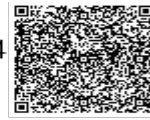
terest of justice, if the sentence awarded to the appellant is reduced to the period already undergone by him.

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

**CRA-S-2023-SB of 2012 (O&M) 4**

lodged on 04.07.2009 and the appellant has been suffering the agony of trial for over 15 years. Since his conviction, he has grown into a law-abiding citizen and desires to live a peaceful life.

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

(i) The judgment dated 30.05.2012 passed by the learned Additional Sessions Judge, Fatehabad is upheld.

(ii) The order of sentence dated 31.05.2012 is modified to the extent that the sentence of rigorous imprisonment for 03 years along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

(iii) The sentence of fine of an amount of Rs. 20,000/- 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.

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

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

(HARPREET SINGH BRAR)
JUDGE

21.02.2025

P.Singh

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No