



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CRA-S No. 2428-SB of 2011 (O&M)
Date of decision: 15.02.2025

Sunil

....Appellant

Versus

State of Haryana

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sandeep Thakan, Advocate
for the appellant.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARPREET SINGH BRAR J. (Oral)

1. This appeal has been preferred against the judgment and order of sentence dated 07.09.2011 passed by the learned Additional Sessions Judge, Bhiwani, vide which the appellant was convicted under Section 20(b)(ii)(B) of the of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act') and sentenced to undergo rigorous imprisonment for a period of 04 years and to pay of fine Rs.50,000/- along with default mechanism, in FIR No.105 dated 11.12.2007 registered under Section 20 of the NDPS Act, at Police Station Bound-Kalan, Charkhi Dadri.

2. In brief, the prosecution's version is that on 11.12.2007 at about 13:15 hours, Inspector Dharampal, along with ASI Attar Singh, HC Hari Ballabh, HC Umed Singh, and EHC Suresh Kumar, was present in a government vehicle bearing registration No.HR-61-4855,

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which was driven by EHC Krishan Kumar No.942 while on patrol and crime detection duty. As the police party was traveling from village Manheru to village Kasni, near the brick kiln of Ranbir, Ex-Sarpanch of village Manheru, one Babulal son of Itbari, approached them. While Inspector Dharampal was speaking to Babulal, the accused was spotted approaching on the road. Upon seeing the police party, the accused abruptly turned around, raising suspicion, and was apprehended. A notice under Section 52 of the NDPS Act was served upon the accused, informing him of his right to be searched before a Gazetted Officer or a Magistrate. The accused expressed trust in the police party and consented for his search. During the search, a polythene packet containing Charas was found from the right pocket of his shirt. Two samples of Charas, each weighing 10 grams, were separated, while the remaining Charas was found to be weighed 310 grams. The samples and the remaining Charas were placed in separate plastic jars, properly sealed with the seal of 'DP', and the seal after use was handed over to ASI Attar Singh. A written intimation was sent to the Police Station through EHC Suresh Kumar No.845 for the registration of the case, following which the FIR (supra) was registered and the accused was arrested.

3. Thereafter, the appellant was convicted and sentenced vide judgement of conviction and order of sentence dated 07.09.2011 by the learned trial Court.

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4. Learned counsel for the appellant contends that he is not assailing the impugned judgment of conviction dated 07.09.2011 on merits and restricts his prayer qua modification of the order on quantum of sentence, to that of the sentence already undergone by the appellant, as he has already undergone a period of 01 year, 01 month and 02 days and is not involved in any other criminal activity.

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 and as such, he does not deserve any leniency.

6. I have heard learned counsel for the parties and perused the record with their able assistance.

7. In ***Deo Narain Mandal Vs. 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, the 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. Further, a



two-Judge Bench of 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 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 Court below indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. Learned counsel for the appellant has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua modification of quantum of sentence.

9. The FIR in the present case was lodged on 11.12.2007 and the appellant has been suffering the agony of trial since the last more than 17 years. Since his conviction, the appellant has grown into a law-abiding citizen and desires to live a peaceful life. As per his custody certificate dated 13.02.2025, the appellant is not involved in any other case and has undergone total sentence of 01 year, 01 month and 02 days, out of total sentence of 04 years in the instant case.

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10. Accordingly, 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.

11. Consequently, the present appeal is disposed of in the following terms:-

- (i) *The judgment of conviction dated 07.09.2011 passed by the learned Additional Sessions Judge, Bhiwani, is upheld, however, the order of sentence of even date, is modified to the extent that the sentence of rigorous imprisonment for 04 years along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.*
- (ii) *The sentence of fine of an amount of Rs.50,000/- imposed upon the appellant by the learned Court below is reduced to Rs.10,000/-. The appellant is directed to deposit the amount of fine, if not paid, before the learned Court below within a period of 01 month from the date of receipt of certified copy of this order and in case of default of payment of fine, the appellant shall be liable to be taken into custody and made to undergo simple imprisonment for 02 months.*

12. All the pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

15.02.2025

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