

CRA-S-842-SB-2009 (O&M)1

202IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-842-SB-2009 (O&M)
Date of Decision: 12.03.2025

GURMAIL SINGH @ MELA

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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

Mr. Sandeep Kumar, DAG Punjab

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 09.03.2009 passed by learned Judge, Special Court, Sri Muktsar Sahib 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 four months	Rs. 500/-	Rigorous imprisonment for 15 days

2. Brief facts of the case are that on 16.04.2007, a police party headed by ASI Ram Kumar with other police officials were on patrolling duty and proceeding from village Sahejra to G.T. Road, Barnala-Ludhiana along the bank of the drain. At about 4.30 PM, when the police party reached about 1/2 kilometer short of the bridge over the drain, then they saw the accused-petitioner coming on foot and he was carrying a plastic bag in his right hand. On seeing the police party, the accused-petitioner got perplexed and turned towards his left side, but on suspicion, he was apprehended and his identity was verified. On the basis of suspicion, search of the petitioner and his belongings was conducted.

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Thereafter, on search of the plastic bag carried by petitioner-accused, it was found to be containing poppy husk, out of which two samples, each 250 grams were separated and converted into two parcels and on weighment, the remaining poppy husk came to be 01 kilogram and it was converted into another parcel. All the parcels were sealed. FIR(*supra*) was registered under Section 15 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. Learned counsel further contends that there was an unexplained delay in sending the representative 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 19 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 1.5 kilogram of poppy husk, attracting the offence under Section 15 of NDPS Act, for which no minimum punishment has been



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and has already undergone an actual sentence of 02 months and 19 days out of total sentence of 04 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. However, the FIR (supra) was lodged on 16.04.2007 and the appellant has been suffering the agony of trial for last almost 18 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 09.03.2009 passed by the learned Judge, Special Court, Barnala is upheld.

(ii) The order of sentence dated 09.03.2009 is modified to the extent that the sentence of rigorous imprisonment for 04 months awarded to the appellant is reduced to the period of sentence already undergone by him.

(Iii) Fine of Rs. 500/- imposed upon the appellant shall remain intact. The appellant is directed to deposit the amount of fine in the trial Court within one 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 one month.

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

(HARPREET SINGH BRAR)
JUDGE

12.03.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No