



CRA-S-2814-SB-2010 (O&M)

1

204 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-2814-SB-2010 (O&M)
Date of Decision: 04.04.2025

NAND RAM

...APPELLANT

Versus

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jatinder Singh, Advocate as *Amicus Curiae*
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 08.10.2010 passed by learned Judge, Special Court, Ferozepur 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(b) of NDPS Act	Rigorous imprisonment for 04 years	Rs. 10,000/-	Rigorous imprisonment for six months

2. Brief facts of the case are that on 22.04.2005, SI Jaspal Singh along with other police officials, in a private vehicle, were going from Dhanni Telian towards canal Bridge village Bhakhra in connection with patrolling duty. When the police party reached in the revenue estate of village Bazipur Bhoma, after parking the vehicle behind the sand heap, they started *nakabandi*. At about 5.30 PM, accused-appellant was seen coming from the side of bridge Bhakhra carrying a jute bag on his head. On suspicion, when the police party tried to catch the accused-appellant, he threw the jute bag carried by him and tried to run away from the spot. But he was apprehended. On the basis of suspicion, search

**CRA-S-2814-SB-2010 (O&M)****2**

of the appellant-accused along with his belongings was conducted. Thereafter, upon search of jute bag, which was thrown by the appellant, poppy husk was recovered. Out of the recovered poppy husk, one sample of 250 grams was separated and remaining on weighment was found to be 39.750 kilograms. Both the parcels were sealed. FIR(*supra*) was registered under Section 15(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as 'NDPS Act').

3. Learned *amicus curiae* for the appellant *inter alia* contends that learned trial Court has failed to appreciate the shortcomings in the prosecution case and prosecution has failed to prove its case beyond the shadow of reasonable doubt. Entire case of prosecution is based upon the testimonies of official witnesses and no independent witness was joined at the time of effecting the alleged recovery, however, the place of recovery was a thoroughfare. Further there is non-compliance of Section 50 of NDPS Act, which is mandatory in nature. The link evidence in the prosecution story is missing and the testimony of PW-1 SI Jaspal Singh cannot be relied upon in view of the deposition of DW-1 HC Devi Dayal. Lastly, he contended that appellant is not involved in any other case and has undergone a period of 11 months and 13 days of custody out of total sentence of 04 years awarded to him.

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 40 kilograms of poppy husk, attracting the offence

**CRA-S-2814-SB-2010 (O&M)****3**

under Section 15 of NDPS Act, for which no minimum punishment has been prescribed. Appellant has already undergone custody of 11 months and 13 days out of total sentence of 04 years, 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

**CRA-S-2814-SB-2010 (O&M)****4**

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 said judgment is based on correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 22.04.2005 and the appellant has been suffering the agony of trial for last almost 20. Since his conviction, the appellant has reformed into a law-abiding citizen and intends 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 08.10.2010 passed by the learned Judge, Special Court, Ferozepur is upheld.

(ii) The order of sentence dated 08.10.2010 is modified to the extent that the sentence of rigorous imprisonment for 04 years and fine of Rs. 10,000/- 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.

11. High Court Legal Services Committee is directed to pay remuneration to the *Amicus Curiae*, as per rules.

(HARPREET SINGH BRAR)
JUDGE

04.04.2025

Ajay Goswami

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No