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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2416-SB-2012 (O&M)
Date of Decision: 04.02.2025

Gurmukh Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Fariad Singh Virk, Advocate
for the appellant. (Through video conferencing)

Mr. Nitesh Sharma, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This appeal has been preferred against the judgment of conviction and order on quantum of sentence dated 17.08.2012 passed by the learned Judge, Special Court, Patiala in case bearing FIR No.28 dated 16.02.2008 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 registered at Police Station Sadar Rajpura, District Patiala, vide which the appellant, had been convicted.

2. The appellant was sentenced as under:

Offence u/s	Sentence	Fine	In default of payment of fine
15 of the NDPS Act	To undergo RI for 02 months.	Rs.1500/-	To undergo RI for a period of 01 month.

3. Brief facts of the case are that on 16.02.2008, ASI Salinder Singh alongwith HC Ravinder Singh, HC Manjit Singh, C. Kulwant Singh, PHG Jaswant Singh and PHG Avtar Singh on official vehicle No.PB-11Y-8102

driven by HC Mam Chand, was present near Rajdeep Palace, on GT Road in the area of Village Gandian, in connection with patrolling and checking of suspected persons. Then a person was seen coming on foot carrying a heavy plastic bag on his head from the side of link road, who on seeing the police party became perplexed and turned towards his back side. On suspicion, he was apprehended by police party. On inquiry, he disclosed his name as Gurmukh Singh son of Gian Singh, resident of Bhagaura, Police Station Ghanaur. The Investigating Officer told the accused that he has a doubt that there is some intoxicant material with him and the search of the plastic bag is to be made. He further told the accused that he has got a legal right to get the search conducted in the presence of Gazetted Officer or Magistrate. The accused opted to get the search conducted in the presence of Investigating Officer. On this, consent memo was prepared. Then during the search of plastic bag being carried by the accused (appellant), poppy husk was recovered from it. Two samples of 250 grams each was separated from it and its parcels were prepared. Remaining poppy husk on weighment came to be 17 kg 500 grams which was also converted into a separate parcel. The parcels were sealed by Investigating Officer with his seal. Sample seal was also prepared separately and the seal was handed over to HC Ravinder Singh after its use. The case property was taken into possession vide recovery memo. From the personal search of the accused (appellant), a currency note of Rs.50/- was recovered from the pocket of his shirt which was taken into possession. Investigating Officer sent ruqa to the Police Station for registration of the case against the accused (appellant), on the basis of which, formal FIR was registered.

4. The appellant was convicted and sentenced vide judgment of conviction and order of sentence dated 17.08.2012 passed by the learned

Judge, Special Court, Patiala.

5. Learned counsel for the appellant contends that he is not assailing the impugned judgment of conviction dated 17.08.2012 on merits and restricts his prayer to modification of the order on quantum of sentence dated 17.08.2012 to that of the sentence already undergone by the appellant. Appellant has undergone a total custody period of 24 days. He further submits that appellant is not involved in any other case.

6. *Per contra*, learned State counsel opposes the prayer of the appellant as learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, as such, he does not deserve any leniency.

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

8. 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. 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.

9. 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. Moreover, 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.

10. The FIR in the present case was lodged on 16.02.2008 and the appellant has been suffering the agony of protracted trial for last about 17 years. Since his conviction, the appellant has grown into law-abiding citizen and desire to live a peaceful life. As per his custody certificate, he is not involved in any other case and has undergone total sentence of 24 days out of total sentence of 02 months, in the instant case.

11. 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.

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

- (i) The judgment of conviction dated 17.08.2012 passed by the learned Judge, Special Court, Patiala is upheld,

however, the order of sentence dated 17.08.2012 is modified to the extent that the sentence of rigorous imprisonment for 02 months along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

(ii) Fine of Rs.1500/- imposed upon the appellant is enhanced to Rs.5000/-. 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 rigorous imprisonment for one month.

04.02.2025

Parveen kumar

(HARPREET SINGH BRAR)
JUDGE

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