

210

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2694-SB of 2011 (O&M)
DATE OF DECISION: 01.03.2025

Gurnam Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICEHARPREET SINGH BRAR

Present:- Ms. Aakanksha, Advocate, for the appellant.
(*Amicus Curiae*)

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (Oral)

1. The prayer in the present appeal is to set aside the judgment of conviction and order of sentence dated 23.09.2011 passed by learned Judge, Special Court, Patiala whereby the appellant was convicted and sentenced for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘NDPS Act’), in the case stemming from FIR No.61 dated 13.6.2006, under Section 15 of the NDPS Act at Police Station Ghagga, Patiala.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of three years and to pay fine of Rs.3,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months.



3. Brief facts of the case are that on 13.06.2006, a police party headed by ASI Mohinder Singh was on patrolling duty at Village Dedhna when they saw the petitioner travelling on a scooter. The petitioner was apprehended with 35 Kg of Poppy Husk in the presence of one Labh Singh and two samples of 100 grams each drawn from the bag. The samples were then sent to the chemical examiner who confirmed the contents to be '*Chura* Poppy Heads'. Subsequently, FIR (*supra*) was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae* 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. He contends that the learned Court has not taken into consideration that Form-29 has not been filled on the spot. Moreover, the fact that the appellant was in conscious possession of the contraband has not been proved on record. Further, there was also an unexplained delay in sending the sample of the alleged contraband to the FSL Laboratory. Further, the alleged independent witness Labh Singh has not been examined and that 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 04 months and 25 days in custody and is not involved in any other criminal case.

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 as such, he does not deserve any leniency.



6. 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 35 kg of Poppy Husk, i.e. intermediate quantity, which falls under the purview of Section 15 NDPS Act. As per his custody certificate, he is not involved in any other case and has already undergone an actual sentence of 4 months and 25 days out of total sentence of 03 years, in the instant case. Since there is no minimum punishment prescribed under Section 15 NDPS Act, for the non-commercial quantity 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.

7. 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.

8. 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.

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. However, the FIR (supra) was lodged on 13.06.2006 and the appellant has been suffering the agony of trial for last about 19 years. Since his conviction, he has grown into a law-abiding citizen and desires to live a peaceful life.

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

(i) The judgment dated 23.09.2011 passed by the learned Additional Judge, Special Court Patiala is upheld.

(ii) The order of sentence dated 23.09.2011 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 Rs. 3000/- 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.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.
12. The High Court Legal Services Authority is directed to pay remuneration the learned *Amicus Curiae* as per rules.

(HARPREET SINGHBRAR)
JUDGE

01.03.2025
Manisha

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No