2025:PHHC:065949

1383 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-2946-SB-2010
Date of decision: 16.05.2025

Varun Kumar and another ....Appellants

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ravi Rana, Advocate and
Mr. Ashok Giri, Advocate
for the appellants.

Mr. Rishabh Singla, AAG, 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 10.11.2010 passed by learned Judge, Special Court, Ferozepur, whereby, the appellants were 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.94 dated 25.07.2005, under Section 15 of the NDPS Act at Police Station Makhu.

2. Learned counsel for the appellants submits that appellant No.1, namely, Varun Kumar, had died, as such, the present appeal *qua* appellant No.1 has become abated.

3. In view of the above, the present appeal is disposed of as abated *qua* appellant No.1, namely, Varun Kumar.

4. Appellant No.2, namely, Bitta was convicted for keeping in possession 35 kg of poppy husk and sentenced as mentioned below:

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Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 03 years and to pay fine of Rs.10,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months.

5. Learned counsel for appellant No.2 *inter alia* contends that appellant No.2 has been falsely implicated in the present case and there is non-compliance of mandatory provisions under Section 50 of the NDPS Act. At the time of alleged recovery, no independent witness was joined in the investigation. The link evidence is also missing in the present case which creates serious doubt on the case set up by the prosecution. There is an unexplained delay of 08 days in sending the representative sample to the office of the Chemical Examiner and thus, possibility of tampering with the same cannot be ruled out. Further, he is not assailing the impugned judgment of conviction on merits and restricts his prayer to modification of the order on quantum of sentence, to that of the sentence already undergone by the appellant as he has already undergone an actual period of 06 months and 02 days in custody and he is not involved in any other criminal activity.

6. *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.

7. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that appellant No.2 was convicted for being in possession of 35 kg of poppy husk, i.e. intermediate quantity, attracting the offence of Section 15 of NDPS Act, for which no minimum

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punishment has been prescribed. As per his custody certificate, appellant No.2 has already undergone an actual period of 06 months and 02 days out of total sentence of 03 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.

8. 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.

9. 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

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balance between the efficacy of law and the chances of reformation of the accused.

10. 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 25.07.2005 and appellant No.2 has been suffering the agony of trial for last more than 19 years. Since his conviction, he has grown into a law-abiding citizen and desires to live a peaceful life.

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

(i) The judgment of conviction dated 10.11.2010 passed by the learned Judge, Special Court, Ferozepur, is upheld.

(ii) The order of sentence dated 10.11.2010 is modified to the extent that the sentence of rigorous imprisonment for 03 years and fine along with default mechanism awarded to the appellant No.2 namely Bitta, is reduced to the period of sentence already undergone by him.

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

(HARPREET SINGH BRAR)
JUDGE

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

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