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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2541-SB-2012
Date of decision: 12.05.2025

SURAJ KUMAR

V/S

...APPELLANT

STATE OF PUNJAB

...RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Akhil Aggarwal, Advocate as *amicus curiae*
for the appellant.

Mr. Nitesh Sharma, DAG, 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 16.08.2012 passed by learned Judge, Special Court, Hoshiarpur, whereby the appellant was convicted and sentenced for the offence punishable under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘NDPS Act’), in the case stemming from FIR No.216 dated 13.10.2007 under Section 18 of the NDPS Act at Police Station Mahilpur, District Hoshiarpur.
2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of two years and to pay fine of Rs.10,000/- and in default of payment of fine, to further undergo RI for three months.



3. Brief facts of the case are that on 13.10.2007, when ASI Hakumat Rai along with other police officials was on patrolling duty in the area of village Tuto Mazara and reached near Jhirhi Mai Bali, the appellant, holding one envelope was seen coming. On suspicion, he was apprehended. Upon search of envelop, 01 kg of Opium was recovered. Subsequently, FIR (*supra*) was registered under Section 18 of the NDPS Act.

4. Learned *amicus curiae* for the appellant *inter alia* contends that prosecution has failed to prove its case against the appellant beyond the shadow of reasonable doubt. He further contends that the entire case of the prosecution hinges upon the testimonies of official witnesses. Furthermore, no independent witness was joined during the investigation or at the time of conducting search. Learned counsel submits that there is non-compliance of Section 50 of NDPS Act as recovery was not made in the presence of any Gazetted Officer or Magistrate. Further, there are material contradictions in the testimonies of the official witnesses and initially, PW-4 did not come forward for the cross-examination, as such, conviction of the appellant is not sustainable. Lastly, he submits that the appellant has already undergone total custody period of 04 months and 09 days, out of total sentence of two years, in the instant 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. Moreover, he is involved in one more case.

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 01 kg of Opium, which falls under the purview of Section 18 NDPS Act. As per his custody certificate, he has already undergone an actual sentence of 04 months and 09 days out of total sentence of two years, in the instant case. Since there is no minimum punishment prescribed under Section 18 of 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. Further, the primary consideration in matters where the petitioner/appellant is involved in other NDPS cases ought to be the severity of the offence. Moreover, Co-ordinate benches of this Court have deemed it appropriate to reduce the sentence imposed upon the accused to be the custody already undergone by them, in spite of their involvement in other cases pertaining to the NDPS Act in ***Pritam Singh @ Preeti vs. State of Punjab*** in ***CRA-S-1769-SB-2010*** decided on 03.04.2025, ***Ram Lal vs. State of Haryana*** in ***CRA-S-986-SB-2005*** decided on 11.05.2018, ***Raj Pal vs. State of Haryana*** in ***CRA-S-68-SB-2005*** decided on 28.04.2023, ***Raj Pal vs. State of Haryana*** in ***CRA-S-34-SB-2005*** decided on 28.04.2023 and ***Gurmail Singh and others vs. State of Punjab*** in ***CRA-S-1976-SB-2007*** decided on 28.03.2025.

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 13.10.2007 and the appellant has been suffering the agony of trial for last more than 17 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 dated 16.08.2012 passed by the learned Judge, Special Court, Hoshiarpur is upheld.
- (ii) The order of sentence dated 16.08.2012 is modified to the extent that the sentence of rigorous imprisonment for two years and fine of Rs.10,000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

11. The High Court Legal Services Authority is directed to pay remuneration to the learned *Amicus Curiae* as per rules.

May 12, 2025
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(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |