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IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRA-S-2584-SB-2012 (O&M)
Date of Decision: 05.03.2025

HARBHAJAN LAL

V/S

STATE OF PUNJAB

...Appellant

...Respondent

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mohd. Yousaf, Advocate
for the appellant.

Mr. Sandeep Kumar, DAG Punjab and
Mr. Nitesh Sharma, 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 03.09.2012 passed by learned Judge, Special Court, Jalandhar vide which the appellant has been convicted under Section 15(b) of NDPS Act 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 six months	Rs. 5,000/-	Rigorous imprisonment for 07 days

2. Learned counsel for the appellant *inter alia* contends that entire case of the prosecution hinges upon the testimony of official witnesses and only independent witness namely Sukhdev Raj was joined by the police authorities, however, he was not examined. Further the seal after use was not handed over to the aforementioned witness, rather it was handed over to H.C. Shiv Kumar. Further, the link evidence is missing and the offer given by the Investigating Officer was not proper, rather it was misleading one, which

suffocates the right of the appellant of mandatory safeguard provided under the provisions of Section 50 of NDPS Act. Moreover, there is a delay of 10 days in sending the representative sample to the Forensic Science Laboratory. Learned Counsel further submits that he is not assailing the impugned judgment of conviction dated 03.09.2012 passed by learned Judge, Special Court, Jalandhar on merits and restricts his prayer to modification of the order on quantum of sentence dated 03.09.2012 to that of sentence already undergone by the appellant as he has already undergone a period of 02 months and 07 days out of total sentence of six months imposed upon him and he is not involved in any other case.

3. 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.

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

5. 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.

6. 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.

7. 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. 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.

8. The FIR in the present case was lodged on 14.06.2010 and the appellant has been suffering the agony of trial since the last more than 14 years. As per the custody certificate, the appellant has undergone total sentence of 02 months and 07 days out of rigorous sentence of six months awarded to him and he is not involved in any other case.

9. 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.

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

(i) The judgment of conviction dated 03.09.2012 passed by the learned Judge, Special Court, Jalandhar is upheld, however, the order of sentence dated 03.09.2012 is modified to the extent that the sentence of rigorous imprisonment for six months awarded to the appellant is reduced to the period of sentence already undergone by him.

(ii) Fine of Rs. 5,000/- imposed upon the appellant is enhanced to Rs. 10,000/-. 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 simple imprisonment for one month.

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

05.03.2025
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>