



CRA-S-3153-SB-2010

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3153-SB-2010
Date of decision:21.04.2025
..Petitioner

PARGAT SINGH

Versus

STATE OF PUNJAB ..Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Lupil Gupta, Legal Aid Counsel with
Mr. Rahul, Advocate for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, (ORAL).

1. The prayer in the present appeal is to set aside the judgment of conviction and order of sentence dated 13.12.2010 passed by learned Special Court, Kapurthala, 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.152 dated 27.7.2007, under Section 15/61/85 of the NDPS Act at Police Station Bholath.

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 4 months and to pay fine of Rs.5000/- and in default of payment of fine, to further undergo RI for 1 month.



3. Brief facts of the case are that on 27.7.2007 Inspector Gurbachan Singh along with his police officials was present at T-Point village Metia at the outskirts of village Rajpur in connection with Nakabandi, then Sukhwant Singh S/o Kulwinder Singh and Jasbir Singh son of Channan Singh were joined by police party. In the meantime, one motorcycle was noticed coming from the side of village Metia and the said motorcycle was driven by young Hindu person. The prosecution has further alleged that on seeing police party the driver of the motorcycle became confused and tried to turn back. On suspicion, the person was apprehended and after being inquired he disclosed his name as Pargat Singh S/o Lakha Singh i.e. accused in the present case. It is further the case of the prosecution that a bag was tied on the back seat of the motorcycle driven by the accused/appellant and on search 32 kgs of poppy husk was allegedly recovered from the said jute bag. It was further alleged that thereafter procedural formalities were completed and accused was charged with having committed offence u/s 15/61/85 of NDPS Act.

4. Learned Legal Aid Counsel for the appellant submits that there has been an inordinate delay in sending the sample of the contraband allegedly recovered from the appellant to the chemical examiner and said delay has seriously prejudiced the appellant. He further submits that the prosecution has miserably failed to prove its case beyond reasonable doubt. In fact, the investigating Officer-Gurbachan Singh has not stepped into the witness box to face cross-examination and thus the



prosecution story is unbelievable. The two independent witnesses namely Sukhwant Singh and Jasbir Singh were associated with the search party. However, none of the said witnesses has been examined by the prosecution at the trial which is against the law. The appellant is a poor man and in fact no recovery was ever effected from him. Keeping in view the aforesaid submissions, the appellant is entitled to the order of acquittal in the present case.

5. Learned Legal Aid Counsel for the appellant submits that the appellant has already undergone total custody period of 1 month and 26 days, out of total sentence of 4 months, in the instant case and he is involved in one other case i.e. FIR No.259 dated 9.12.2019 under Sections 15/61/85 NDPS PS Tanda.

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 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 the appellant was convicted for being in possession of 32 Kg of poppy husk, which falls under the purview of Section 15 NDPS Act. As per his custody certificate, he has already undergone an actual sentence of 1 month and 26 days out of total sentence of 4 months, 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.

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 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 27.07.2007 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. 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.

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

- (i) The judgment dated 13.12.2010 passed by the learned Special Court, Kapurthala is upheld.
- (ii) The order of sentence of dated 13.12.2010 is modified to the extent that the sentence of rigorous imprisonment for 4 months and fine



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of Rs.5000/- along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.

13. The High Court Legal Services Authority is directed to pay remuneration to the learned Legal Aid Counsel as per rules.

21.04.2025

Poonam

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No