

1379-2

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-3205-SB-2010

Date of decision: 16.05.2025

Ishwar Chander @ Manga @ Tunda and another

....Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Devinder Pal Singh Batra, Advocate (*Amicus Curiae*)
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 25.10.2010 passed by learned Judge, Special Court, Hoshiarpur, 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.186 dated 25.12.2006, under Section 15 of the NDPS Act at Police Station Haryana, District Hoshiarpur.
2. The appellants were convicted for keeping in possession 20 kg of poppy husk and sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 02 years & 06 months and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for two months.

3. Learned counsel for the appellants *inter alia* contends that the prosecution has miserably failed to prove its case beyond the shadow or reasonable doubt. One more person was identified as Nanha Lal son of Lal

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Chand by PW-3 ASI Sangat Singh, was neither arrested nor his role was investigated. Further, one Malkiat Singh was joined as an independent witness, however, he has not been examined by the prosecution which creates serious doubt on the story set up by the prosecution. Further, there is non-compliance of Section 50 of the NDPS Act and there is delay in sending the representative sample to the office of the Chemical Examiner beyond the stipulated period. Lastly, it is submitted that the appellant No.1 has already undergone an actual period of 01 year, 07 months and 21 days and appellant No.2 has already undergone an actual period of 10 months and 06 days in custody.

4. *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. He further submits that both the appellants are involved in heinous crime and appellant No.1 is involved in other cases under the NDPS Act and as such, they do not deserve any leniency.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellants were convicted for being in possession of 20 kg of poppy husk, i.e. intermediate quantity, attracting the offence of Section 15 of NDPS Act, for which no minimum punishment has been prescribed. As per their custody certificate, appellant No.1 has already undergone an actual period of 01 year, 07 months and 21 days and appellant No.2 has already undergone an actual period of 10 months and 06 days out of total sentence of 02 years & 06 months, 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

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sentence awarded to the appellants is reduced to the period already undergone by them.

6. 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.

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 25.12.2006 and the appellants have been suffering the agony of trial for last more than 18 years. Since their conviction, they have grown into a law-abiding citizen and desire 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 of conviction dated 25.10.2010 passed by the learned Judge, Special Court, Hoshiarpur, is upheld.

(ii) The order of sentence dated 25.10.2010 is modified to the extent that the sentence of rigorous imprisonment for 02 years & 06 months and fine along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.

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

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

(HARPREET SINGH BRAR)
JUDGE

16.05.2025*Neha*

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