236 IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

CRA-S-2935-SB-2012
Decided on:25.04.2025

Balvir Singh @ Babbu and another .... Appellants

versus

State of Punjab .... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Liaqat Ali, Advocate
for the appellants.

Mr. Sandeep Kumar, DAG, Punjab.

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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 12.09.2012 passed by learned Judge, Special Court, Moga whereby the appellants were convicted and sentenced for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act'), in the case stemming from FIR No.46 dated 07.03.2008 registered under Section 20 of NDPS Act at Police Station Dharamkot, Moga.

2. The appellants were sentenced for keeping in their possession 450 grams of charas, as mentioned below:

Offence	Sentence
Section 20 of NDPS Act, 1985	Rigorous imprisonment for a period of 03 years and to pay fine of Rs.10,000/- each and in default of payment of fine, to further undergo RI for 04 months each.

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3. Learned Counsel for the appellants submits that he is not assailing the impugned judgment of conviction dated 12.09.2012 passed by learned Judge, Special Court, Moga on merits and restricts his prayer to modification of the order on quantum of sentence dated 12.09.2012 to that of sentence already undergone by the appellants. As per the custody certificates, the appellants have undergone a period of 05 months and 05 days.

4. *Per contra*, learned State counsel opposes the prayer of the appellants as the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record. Learned State counsel further submits that the appellant Balvir Singh @ Babbu is not involved in any other case whereas appellant Manjit Singh @ Babbu is involved in one more case under 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 450 grams of charas, which falls under the purview of Section 20 of NDPS Act. As per the custody certificates, both the appellants have undergone a period of 05 months and 05 days out of total sentence of 03 years in the instant case. The appellant Balvir Singh @ Babbu is not involved in any other case whereas appellant Manjit Singh @ Babbu is convicted in one more case under NDPS Act, however, he is on bail vide order dated 23.09.2021 and not involved in any other case. Since there is no minimum punishment prescribed under Section 20 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 appellants is reduced to the period already undergone by them.

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6. 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.

7. 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.

8. 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 07.03.2008 and the appellants have been suffering the agony of trial for the last more than 17 years. Since their conviction, they have grown into law-abiding citizen and desire to live a peaceful life.

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

(i) The judgment dated 12.09.2012 passed by the learned Judge, Special Court, Moga is upheld.

(ii) The order of sentence dated 12.09.2012 is modified to the extent that the sentence of rigorous imprisonment for three years and fine of Rs.10,000/- each along with default mechanism awarded to the appellants is reduced to the period of sentence already undergone by them.

10. Pending miscellaneous applications, if any, shall also stand disposed of.

25.04.2025
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(HARPREET SINGH BRAR)
JUDGE

Whether speaking/non-speaking? Yes/No
Whether reportable? Yes/No

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