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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-1631-SB-2014 (O&M)
Date of decision: 27.02.2025

Gurjit Singh and another

... Appellants

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shubhdeep Singh Chhatwal, Advocate for
Mr. Ajaivir Singh, Advocate
for the appellants.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

CRM-7723-2025

1. This application has been filed under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 for fixing an actual date of hearing in the
main appeal.

2. In view of the averments made in the application, same is
allowed. With the consent of both the parties, the main appeal is taken on
board for final disposal today itself.

CRA-S-1631-SB-2014

3. Instant appeal has been preferred against the judgment of



conviction dated 31.03.2014 and the order of sentence of even date passed by learned Judge, Special Cout, Patiala, in FIR No.145 dated 13.09.2009 under Sections 18/25/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), registered at Police Station Julkan, District Patiala, vide which the appellants were convicted and sentenced under Section 18 of NDPS Act and were ordered to undergo rigorous imprisonment for a period of 05 years and to pay a fine of Rs.20,000/- each along with default mechanism.

4. Briefly, the facts of the case are that on 13.09.2009, ASI Nirmal Singh along with other police officials was on patrolling duty and was going from Village Hajipur towards Anaj Mandi, Dudhan Sadhan and *en route*, they met Gurnam Singh, Sarpanch son of Gian Singh, resident of Village Hajipur and he was accompanied by the police party. At about 02.30 p.m., when the police party reached at bridge of Canal Minor near godown, two Sikh gentlemen were seen coming on a scooter make Bajaj Chetak bearing registration No.CH-03-A-5179. On seeing the party party, they tried to turn back the scooter. However, on the basis of suspicion, ASI Nirmal Singh, with the help of fellow police officials, apprehended them. Upon inquiry, the person, who was driving the scooter disclosed his name as Gurjit Singh and the pillion rider disclosed his name as Gurmail Singh. ASI Nirmal Singh disclosed his identity to the accused persons and said that he wanted to conduct their search, as he had suspicion of carrying some narcotic substance



by them. Upon apprising the accused persons of their right to get the search conducted in the presence of a Gazetted Officer or a Magistrate, they expressed their desire to get their search conducted by a Gazetted Officer. The joint dissent statement of both the accused was recorded and thereafter, ASI Nirmal Singh made a call to DSP(R) Devinder Singh, who reached at the spot and after disclosing his identity, the accused reposed confidence in him and in this regard, consent memo was recorded. After that, as per directions of DSP(R) Devinder Singh, ASI Nirmal Singh conducted search of the accused persons and aforementioned scooter and from the dicky of the scooter, opium wrapped in a glazed paper was recovered. After completing all the necessary formalities, FIR (*supra*) was registered.

5. The appellants were convicted by learned Judge, Special Court, Patiala, vide judgement of conviction and order of sentence dated 31.03.2014 to undergo rigorous imprisonment for a period of 05 years and to pay a fine of Rs.20,000/- each along with default mechanism.

6. Learned counsel for the appellants, at the very outset, submits that vide order dated 05.12.2014 passed by this Court, sentence of the appellants was suspended and thereafter, during pendency of the present appeal, appellant No.2 Gurmail Singh has passed away.

7. In view of the above, instant appeal qua appellant No.2 Gurmail Singh stands abated.

8. Learned counsel on behalf of appellant No.1 Gurjit Singh



contends that he is not assailing the impugned judgment of conviction dated 31.03.2014 on merits and restricts his prayer to modification of the order of sentence qua appellant No.1, to that of the sentence already undergone by him, as he has already undergone a period of 11 months and 04 days and is not involved in any other criminal activity.

9. *Per contra*, learned State counsel opposes the prayer made by appellant No.1 and contends that learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record and as such, he does not deserve any leniency.

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

11. In ***Deo Narain Mandal Vs. 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, the 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.



Further, a two-Judge Bench of 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 conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

12. A perusal of the judgment of conviction passed by learned trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. Moreover, learned counsel appearing for appellant No.1 has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua modification of quantum of sentence.

13. The FIR in the present case was lodged on 13.09.2009 and appellant No.1 has been suffering the agony of trial since the last more than 15 years. Since his conviction, appellant No.1 has grown into a law-abiding citizen and desires to live a peaceful life. As per his custody certificate dated 26.02.2025, appellant No.1 is not involved in any other case and has undergone total sentence of 11 months and 04 days in the instant case.



14. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to appellant No.1 is reduced to the period already undergone by him.

15. Resultantly, the present appeal is disposed of in the following terms:-

- (i) The judgment dated 31.03.2014 passed by learned Judge, Special Court, Patiala is upheld, however, the order of sentence of even date is modified to the extent that the sentence of rigorous imprisonment for five years along with default mechanism awarded to appellant No.1 is reduced to the period of sentence already undergone by him.
- (ii) Appellant No.1 is directed to deposit the fine amount of Rs.20,000/- with learned trial Court within one month from the date of receipt of certified copy of this order, if not yet deposited and in case of default of payment of fine, appellant No.1 shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

16. All the pending miscellaneous application(s), if any, shall also stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

27.02.2025
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No