



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

414

CRA-S-191-SB-2007 (O&M)
Date of decision: 19.05.2025

Mahabir Singh

State of Haryana

Versus

....Appellant

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Khushboo Joria, Advocate (*Amicus Curiae*)
for the appellant.

Mr. Harkesh Kumar, AAG, Haryana.

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 09.09.2006 passed by learned Additional Sessions Judge-II, Bhiwani whereby the appellant was convicted and sentenced for the offence punishable under Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter ‘the NDPS Act’), in the case stemming from FIR No.126 dated 20.07.2004 registered under Section 20 of the NDPS Act at Police Station Civil Lines, Bhiwani.
2.

The appellant was found in possession 120 gms of Charas, for which he was convicted and sentenced as follows:

Offence	Sentence
Section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 04 years and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 03 months.



3. Learned *amicus curiae*, *inter alia*, contends that along with the search of the contraband, the personal search of the appellant was also conducted and as such, it was incumbent upon the investigating officer to have complied with the mandatory provisions of Section 50 of the NDPS Act. Further the notice (Ex.PD) clearly indicates that the safeguards provided under Section 50 of the NDPS Act, have not been followed and the option given by the investigating officer is defective and on this ground alone, the appellant is entitled for acquittal. Further, there is a delay of 20 days in sending the representative sample to Forensic Science Laboratory for chemical examination and the prosecution has not provided any explanation with regard to such an inordinate delay. Moreover, Rajinder Kumar who was allegedly joined as independent witness by the police party did not support the case of the prosecution and as such, in view of the aforementioned shortcomings and discrepancies, the appellant is entitled to be acquitted from the notice of accusation. Lastly, the appellant has already undergone a period of 01 year, 01 month and 01 day in custody and is not involved in any other criminal case.

4. *Per contra*, learned State counsel opposes the prayer of the appellant on the ground that the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record as such, the appellant does 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



appellant was convicted for being in possession of 120 gms of Charas, i.e. intermediate quantity, attracting the offence of Section 20 of the NDPS Act, for which no minimum punishment has been prescribed. As per the custody certificate, the appellant is not involved in any other case and has already undergone an actual sentence of 01 year, 01 month and 01 day out of total sentence of 04 years, in the instant case. Since there is no minimum punishment prescribed under Section 20 of the NDPS Act, 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.

6. 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.

7. 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.

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. The FIR (supra) in the present case was registered on 20.07.2004 and the appellant has been suffering the agony of trial since the last more than 20 years. Since the conviction, the appellant has grown into a law-abiding citizen and desires to live a peaceful life.

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

(i) The judgment of conviction dated 09.09.2006 passed by the learned Additional Sessions Judge-II, Bhiwani is upheld.

(ii) The order of sentence is modified to the extent that the sentence of rigorous imprisonment for a period of 04 years and fine along with default mechanism awarded to the appellant is reduced to the period of sentence already undergone by him.



- 10. The High Court Legal Services Authority is directed to pay remuneration to learned *Amicus Curiae* as per rules.
- 11. All the pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

19.05.2025
yakub

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