

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

310

2026.PHHC.031048



CRA-S-269-SB-2011 (O&M)
Decided on: February 25, 2026.

KARNAIL SINGH @ NONI

...Appellant

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

PRESENT Ms. Madhvi Singla, Advocate, (Legal-aid-counsel)
for the appellant.

Mr. Saurav Verma, Addl. A.G. Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

The instant appeal has been preferred against the judgment of conviction and order of sentence dated 12.01.2011 passed by the Judge, Special Court, Barnala, in Sessions Case bearing No.35 dated 12.06.2009 arising out of FIR bearing No.25 dated 28.04.2009, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Barnala, whereby the appellant had been convicted for commission of offence under Section 18 of the NDPS Act, for having been found in conscious possession of 1 kg 500 g of opium without any permit

or licence and vide order of even date, sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/-.

2 Succinctly stated, on 28.4.2009, ASI Baljit Singh, along with other police officials, while posted in CIA, Barnala, was on a government vehicle in connection with patrolling duty and checking of bad elements. The police officials had been going through the link road from Thikriwala Barnala to Raikot towards village Wazidke Kalan. When they were just 1/2 KM away from the main road in the area of village Wazidke Kalan at about 3:00 PM, Karnail Singh alias Noni (appellant herein) was seen coming on a black coloured motorcycle from the side of village Wazidke Kalan. Seeing the police party, he slowed down the motorcycle. On suspicion, the investigating officer, with the help of fellow police officials, apprehended the accused. On enquiry, the accused disclosed his name as Karnail Singh alias Noni and also disclosed his other particulars. In the meantime, a person was seen coming from the Wazidke Kalan side from the fields. On enquiry, he told his name as Som Nath son of Seeta Ram, and he was joined by the investigating officer in the police party. Then the investigating officer gave his identity to Karnail Singh accused, and told him that he suspected him of possessing some illegal substance, for which he wanted to conduct his search as well as that of his motorcycle bearing No. PB 19 C 3236. The Investigating Officer apprised the accused of his right to get the search conducted in the presence of a Magistrate who could be called at the spot. However, the accused reposed confidence in the investigating officer, upon which his consent statement F.PA was prepared, which was attested by witnesses and thumb-marked by the accused. Investigating Officer conducted the search of Karnail Singh

accused, who had a white-coloured Parna tied around his waist. After removing the said parna, and on checking the same, opium was recovered in a wrapped polythene paper. Two samples of 10 grams each were separated and packed in a parcel; the remaining opium came to be 1 kg 480g, which was put into a plastic box along with the parna and packed in a parcel. The investigating officer sealed both the sample parcels and the plastic box parcel with his seal bearing seal impression BS. The sample of seal Ex. P1 was prepared separately. The seat was handed over to Som Nath, the witness, after use. No document was found on the motorcycle after checking. All three parcels, along with the sample seal and motorcycle No. PB19 C 3236 were taken into police possession vide recovery memo Ex. PB, which was attested by the witnesses. On personal search of the accused, Rs. 200/- was recovered, which was taken into police possession vide recovery memo Ex. PC attested by the witnesses and thumb-marked by the accused. Investigating Officer sent ruqa Ex. PD based on which formal FIR Ex. PD/1 was registered by ASI Sampuran Singh. Site Plan Ex. PE was prepared at the spot with correct marginal notes; arrest memo Ex. PF was prepared, attested by the witnesses and thumb-marked by the accused. Statements of witnesses were recorded. On return to the police station, investigating officer produced the accused, witnesses, all the three parcels, sample seal, motorcycle and personal search amount before SI Sukhdev Singh SHO, Police Station, Barnala, who verified the facts from the accused and witnesses and then affixed his seal bearing impression SS on all the three parcels of opium and sample seal and also attested the same. Then SI Sukhdev Singh, SHO, deposited all three parcels, sample seal, motorcycle and personal search amount of

Rs. 200/- with MHC Jasbir Singh intact. The investigating officer recorded the statement of the SHO and also prepared a special report under Section 57 of the NDPS Act in the police station, as Ex. PG with endorsement of the DSP Ex. PG/1. Intimation about the arrest of the accused was furnished to Paramjit Singh son of Karnail Singh, in the Police Station, Barnala, vide intimation memo Ex.PH. On the next day, i.e. 29.1.2009, the investigating officer took three parcels and the sample seals from MHC Jasvir Singh and produced the same along with the accused before the Illaqa Magistrate. The Illaqa Magistrate saw all three parcels and signed the same. As per the Chief Judicial Magistrate, the investigating officer deposited one sample parcel as a residue parcel in the judicial malkhana situated in Court Complex, Barnala and the remaining samples and sample seal were deposited with MHC Jasbir Singh. Inventory was also prepared vide Ex. PJ, the order passed by the Chief Judicial Magistrate as Ex. PJ/1 after receipt of the report of the Chemical Examiner and completion of the investigation, the challan was prepared and presented against the accused.

3 On the appearance of the appellant-accused, copies of the documents as required under Section 207 Cr.P.C were supplied to him free of cost.

4 After hearing the arguments of the Addl. PP for the state and the defence counsel, appellant-accused was charge sheeted under Section 18 of Narcotic Drugs & Psychotropic Substances Act, to which he pleaded not guilty and claimed trial.

5 To prove its case before the trial Court, the prosecution closed its evidence after examining the following witnesses: -

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|----|-------------------|-----|
| 1. | SI Sukhdev Singh | PW1 |
| 2. | ASI Baljit Singh | PW2 |
| 3. | HC Jasbir Singh | PW3 |
| 4. | C Chhota Ram | PW4 |
| 5. | Kirpal Singh | PW5 |
| 6. | ASI Randhir Singh | PW6 |

6 After the closure of the prosecution evidence, the statement of the appellant-accused was recorded under Section 313 Cr. P.C., whereby incriminating material was put to him. Appellant denied the allegations and pleaded innocence. However, no defence witness was examined by the appellant in his defence, and the same was closed.

7 The parties were heard by the trial Court, and after considering the evidence adduced and the rival submissions advanced, the appellant was convicted for the commission of offence under Section 18 of the NDPS Act, 1985 and sentenced as above. Hence, the present appeal.

8 Since there was no representation on behalf of the appellant, Ms. Madhvi Singla, Advocate, (PH-6377-2025; Mobile No.81461-19355) was nominated as a legal-aid-counsel to assist this Court on behalf of the appellant. She has gone through the paper book as well as the record, which is available and has assisted this Court.

9 It has been argued by the learned legal aid counsel that the appellant has been falsely implicated in the aforesaid case and that the trial

Court has not appreciated the facts in its entirety, resulting in an erroneous finding of guilt. It is contended that there was no direct evidence, and the entire case of the prosecution is based on circumstantial evidence. The trial Court has relied on very weak evidence adduced by the State. It is contended that no independent witness has been examined by the prosecution, which is fatal to its case. It is also contended that there is an unexplained delay of 06 days in sending the sample to the FSL Laboratory. It is further contended that the trial Court has not considered that the mandatory provisions of the NDPS Act had not been complied with.

10 State counsel, on the other hand, contends that the trial Court has taken into consideration the entire evidence, and that independent witnesses had been joined, and a mere non-examination of the independent witness would not make the case of the prosecution doubtful. He further contends that there is nothing on record based on which it can be assumed that, on account of the delay in sending the samples for chemical examination by a period of six days, the sample had been tampered with. State counsel further contends that all the arguments advanced have already been considered and that no illegality or perversity has been pointed out. Further, there is nothing on record to suggest that the conclusions drawn by the trial Court in any manner suffer from an incorrect appreciation of the evidence that has been adduced before the trial Court. Any minor discrepancies having no bearing on the outcome are to be ignored. Further, the trial Court specifically noticed that the seal impressions had been intact during the entire period, and there was no

tampering of the seized material. He contends that all the aspects have been duly considered and declined by the Courts.

11 I have heard the learned counsel appearing for the respective parties and have gone through the documents appended along with the present appeal, including the impugned judgment.

12 On consideration of the evidence and the arguments advanced on behalf of rival parties, the appellate Court recorded as under:

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“15. It is case of the prosecution that at the time of recovery from the conscious possession of the accused one independent witness namely Som Nath was joined but learned Addl. PP gave up this witness being won over by the accused on the basis of separate application moved by the investigating Officer of the case by way of separate statement dated 9.12.2009.

*16. When the independent witness was joined but not examined being won over that does not make the prosecution case doubtful and in this context reference can be made to the pronouncement of case **Mohd. Jabal Vs. The State of Punjab 2003 (1) RCR Criminal 316**. In this pronouncement in Paras No.13 and 14 it has been held that when independent witness has been joined at the time of recover of contraband but he has been given up as having been won over, the prosecution can not be blamed and conviction can be based on the statements of the official witnesses who have no motive to falsely implicate the accused. In this pronouncement reliance was also placed on the pronouncement of Hon'ble Apex Court in Case **Ambika Prasad and another Vs State (Delhi Admn. Delhi) 2000 (1) CRC (CrI) 643**, in which it has been laid down that if*

independent persons are not willing to carry with the investigation, the prosecution can not be blamed and it can not be a ground for rejecting the evidence of eye witnesses. The relevant portion of the observation made by Hon'ble Supreme Court is reproduced as Follows:-

“It is known fact that independent persons are reluctant to be a witness or to assist the investigation. Reasons are not far to seek. Firstly, in cases where injured witnesses or the close relative of the deceased are under constant threat and they dare not depose truth. That belief can not be said to be without any substance. Other reasons may be the delay in recording the evidence of independent witnesses and repeated adjournments in the court. In any case, if independent persons are not willing to cooperate with the investigation, prosecution can not be blamed and it can not be a ground for rejecting the evidence of injured eye witness.”

*17. Similarly in case titled as **Roop Singh Vs. State of Punjab 1996 (1) R.C.R (Crimina) 146 (P&H)**, Hon'ble Division Bench has held that no adverse inference can be drawn, when the independent witness was given up by the prosecution, as won over by the accused. It has been laid down that public witness, being human beings, are quite exposed and vulnerable to human feelings of yielding, brow beatings, are quite exposed and vulnerable to human feelings of yielding, browbeating, threats and inducements, and giving up of the public witnesses, as won over, is fully justified, in the present day situation prevailing in the society. Further in **Case Karnail singh Vs. State of Punjab 1983 Criminal Law Journal 1218 (DB)** it was held that where the independent witness, was won over, by the accused, and only the official witnesses were examined, by the prosecution, who*

were considered to be not interested persons, their evidence can not be doubted, on the ground of their official status. The reliance was also placed on the pronouncement in **case Appa Bhai and another Vs. State of Gujrat A.I.R. 1988 S.C. 696** wherein it has been laid down, prosecution story cannot be thrown out, on the ground, that an independent witness had not been examined by it. It has been laid down that civilized people, are generally insensitive., when a crime is committed, even in their presence, and they withdraw from the victims side, and from the side of the vigilant. It has been laid down that they keep themselves away from the Courts unless it is inevitable and they think the crime like a civil dispute, between two individuals and do not involve themselves in it.

18. Reliance was also placed on the pronouncement in case *State of NCT of Delhi Vs. Sunil* 2001 (1) RCR (Criminal) 56 in which it has been held as under:-

It is archaic notion that actions of the Police officers should be approached with initial distrust. It is time now to start placing at least initial distrust on the actions and the documents made by the police at any rate, the court can not start with the presumption that the police records are untrustworthy. As a proposition of law the presumption should be the other way round. The official acts of the police have been regularly performed is a wise principle of presumption and recognized even by the legislature."

19. In **Masalti Vs State of Uttar Pradesh AIR 1965 (S.C.)202**, it was held that it is, undoubtedly, the duty of the prosecution, to lay before the Court, all material witnesses, available to it, whose evidence is necessary for unfolding its case, but it would be unsound to lay down it, as a general

rule, that every witness, must be examined, even though his evidence, may not be very material or, even if it is known that he has been won over or terrorized.

*20. Further in case titled **Piar Kaur Vs. The State of Punjab 2009 (3) RCR Criminal 403** in Paras No.22 it has been laid down that the Public Prosecutor for the State is master of the case. It is for him to decide as to how many witnesses he wanted to examine to prove his case. It has been laid down that if he is satisfied that the examination of a single witness, to prove a particular fact was sufficient on the ground, that his evidence carries a ring of truth and implicit reliance thereon, could be placed thereon, could be placed then he need not examine other witnesses. It has been laid down that non examination of all the witnesses did not at all affect the merits of the case. In this case also independent witness was given up by the Public Prosecutor being won over by the accused and it was held that it can not be said discretion exercise by PP in giving up a witness is arbitrary.*

*21. The Hon'ble Apex Court in case **titled as State of Punjab Vs. Surjit Singh and Anr. 2009 (3) CRC (Criminal) 117** has further held that where independent witness was not examined being won over the prosecution witness does not become vulnerable due to non-examination and conviction can be made on the statements of official witnesses.*

22. Therefore, there is nothing on the record that what prejudice has been caused to the accused for non examination of the independent witness. When he is won over, his non examination is not fatal. Therefore, this contention of the learned counsel for the accused being devoid of any merit and this point is accordingly decided in favour of the prosecution and against the accused.

Point 2

23. As per the prosecution case, recovery was effected on 28.4.2009 and as per Ex.P1 sample was sent on 4.5.2009 i.e. after about 6 days but there is nothing on the record that was any there was any occasion of opportunity with the police officials to tamper with the seal of the sample. Otherwise also mere delay in sending the sample for chemical examination is not fatal to the prosecution case. In this context reference can be made to the pronouncements of cases titled as **Mohan Singh Vs. State of Punjab 2007 (4) RCR (Criminal) 705** wherein our Hon'ble High Court has laid down that where samples were sent to the FSL, after 10 days, mere delay, mere delay in sending the same to the Laboratory is not fatal where there is evidence that the seized articles were kept in proper and safe custody. Further in **case Sanjiv Kumar @Sanju and another Vs. State of Punjab 2007(4) RCR (criminal) 744**, it has again been laid down that delay of 14 days in sending the sample to FSL when there is no evidence that the sample was tampered with or any serious infirmities or violation of any statutory of mandatory provisions noticed in the case, delay in sending the sample alone is not sufficient to vitiate the prosecution case.

24 Further in case **Hardip singh Vs. State of Punjab 2008 (4) RCR (Criminal Page 97)**, in this pronouncement in Para No.12 it has been laid down that where the samples were sent to the office of chemical Examiner after 40 days and the samples and the case property remained with S.H.O. through out, but when the sample reached in the office of Chemical Examiner, the Seals were intact. It was held that delay of 40 days in sending the samples did not and could not have caused any prejudice to the accused.

25. Further in case titled as *Baggar singh alias Gaggi vs. State of Haryana 2009 (4) RCR (Criminal) 183*, Divison Bench of our Hon'ble High Court has held that delay of 18 days in sending the sample to FSL does not make the prosecution case doubtful, if seals remained intact when samples reached FSL.

26. Further in case titled as **Piar Kaur Vs. The State of Punjab 2009 (3) RCR (Criminal) 403** in paras No.19 it has been laid down that delay of 15 days in sending the sample in the office of Chemical Examiner is not sufficient to come to the conclusion that sample was tampered with at any stage.

27. Further in case titled as **Karaj Singh vs. The State of Punjab 2010 (2) RCR (Criminal) 69 at page 70** it has been laid down that delay of six days in sending the sample to the office of chemical Examiner is not fatal when there is evidence on the file that there was no tampering. It was laid down that executive instructions in respect of delay have no binding force. As per the report of the Chemical Examiner seals on the samples were intact and tally with the sample seal. Therefore, this contention of the learned counsel for the accused is again devoid of any merits and this point is answered in favour of the prosecution and against the accused.

Point 3

28 As regards the contention of the learned counsel for the accused regarding non-compliance of mandatory provision of Section 50 or the Act is concerned, Ex.PD is ruqa sent by the investigating officer of the case on the basis of which FIR has been recorded and as per the said ruqa investigating officer has specifically apprised the accused that he want to conduct his search and search of motor cycle bearing No. PB 19 C 3236 Hero Honda as he suspects some contraband in his possession and he was also apprised of his right to get

search conducted in the presence of Gazetted Officer of the Magistrate who can be called at the spot but accused reposed confidence upon investigating officer of the case by way of consent memo Ex. PA and thereafter on his personal search recovery was effected.

29. ASI Baljit Singh (PW2) when appeared into the witness box he again deposed that he apprised the accused to get his search conducted in the presence of Magistrate who can be called at the spot and ASI Randhir Singh (PW6), witness to the recovery has corroborated the statement of ADI Baljit singh (PW2) regarding compliance of mandatory provision of Section 50 of the Act. Therefore, this contention of the learned counsel for the accused is devoid of any merit and this point is decided in favour of the prosecution and against the accused.

Point 4

30. ASI Baljit singh investigating officer when appeared into the witness box he has superficially deposed that on the personal search of the accused from the parna wrapped by him along with his waist opium wrapped in a polythene paper was recovered out of which two samples of 10grams each were separated and remaining on weighment came to 1 Kg 480 gms. He in his examination in chief has indetified second sample Ex. P2 bulk of the case property Ex.P3 and the motor cycle Ex.P4 which rversion is corroborated by statement of ASI Randhir Singh (PW6) and by statement of SI/SHO Sukhdev Singh PW1) who verified the facts of the case before whom accused, sample and case property were produced.

31. HC jasvir Singh (PW3) tendered his affidavit Ex. PK and as per there statement of C. Chhoa Ram (PW4) link evidence is complete and as per the report of the Chemical Examiner Ex. PX sample consists of 1.76% morphine i.e. opium.

32. Our own Hon'ble Court in case titled **as Surjit Singh Vs. The State of Punjab 2008 (2) RCR Criminal 257** has held that where accused was found in constructive possession of and control over the contraband it was for him to explain as to under what circumstances, he was sitting by the side of gunny bags. It has been held that once the possession and control over the gunny bags, containing poppy husk, of the accused was established, then the statutory presumption under Section 35 and 54 of the Act operate against him and onus shifts on him to explain as to whom those bags containing poppy husk belonged, if the same did not belong to him and as to how he was found sitting by the side of those bags, containing poppy husk. In Case **State of Punjab Vs. Dharampal Singh 2008 (2) RCR (Criminal) 402** our own Hon'ble High Court has explained the meaning of "conscious possession" as under:-

1. Once the accused, is found to be in possession of a contraband, he is presumed to have committed the offence, under relevant provisions of the Act until the contrary is proved.
2. According to section 35 of the ND & PS Act, the court shall presume the existence of mental state, for the commission of an offence, and it is for the accused to prove otherwise.
3. The Word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate and intended.
4. Once possession is established, the person, who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge.

It has been laid down that once possession is established; the person who claims that it was not in his conscious possession has to establish his case how he came to be in possession, being within his special knowledge.

33. Similarly in **case Gurdev Singh And another Vs. State of Punjab 2008 (1) RCR (Criminal) 513**, Our Hon'ble High court has laid down that when there is recovery of 40 bags of Poppy Husk from sacred cabin in truck, the driver and fourth other persons traveling in the truck and they failed to explain how they were present in the truck, in the circumstances, it can be said that the accused were in conscious possession of poppy husk and conviction was upheld. Similarly, in **case Kashmir Singh Vs. State of Punjab 2006 (2) (Criminal 447** again our Hon'ble High court in full bench authority has held that there is presumption under Sections 35 and 54 ND&PS Act regarding culpable mental state and conscious possession on that part of the accused but these presumptions are rebuttable and it was for the accused to rebut the presumptions. It has also been laid down in Para No.6 that when there is recovery of contraband from possession of a person, once possession is established, the person, who claims that it was not a conscious possession has to establish it because how he came to be in possession is within his special knowledge. In this pronouncement reliance was also placed on the judgment of the Hon'ble Supreme Court in case titled as **Madan Lal and Anr. Vs. State of Himachal Pradesh, 2033 (4) RCR (Criminal) 100**, wherein it has been held that when there was recovery of contraband on search of car, when the contention of the accused was that he was not in conscious possession of the contraband, it has been held that it is for the accused to establish that he was not in conscious possession, because how he came to be in

possession is within his special knowledge. In this pronouncement the Hon'ble Apex Court has defined the term "Conscious Possession" which has been explained as Under:-

- 1. Whether there was conscious possession has to be determined with reference to the factual backdrop.*
- 2. The expression "Possession" is a polymorphism term which assumes different colours in different contexts. It may carry different meaning in contextually different backgrounds. It is impossible.*
- 3. To work out a completely logical and precise definition of "possession" uniformly applicable to all statutes.*
- 4. The word "conscious" means awareness about a particular fact. It is a state of mind which is deliberate or intended.*

It was held that possession in a given case need not be physical possession but can be constructive having power and control over the article in case in question while the person whom physical possession is given olds it subject to that power of control.

*34. Further in case titles as **Meah Singh Vs. State of Punjab 2003 (4) RCR (CRI) 319** is was held by the Hon'ble Apex Court that "word conscious" means awareness about a particular fact. It is a statement of mind which is deliberate or intended. "possession" is a polymorphs term which assumes different colours in different contexts. It is impossible to work out a completely logical and precise definition of "Possession" uniformnally applicable to all situations in the context of all statutes. Once possession is established he person who claims that it was not a conscious possession has to establish it because how he came to be in*

possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of his position because of presumption available in law. Similar is the position in terms of Section 54 where also presumption is available to be drawn from possession of illicit articles.

35. Keeping in view the law referred above and statements of the prosecution witnesses, I Hold that prosecution has been able to prove recovery of 1Kg 500gm of opium from the conscious possession of the accused. As per the statement of ASI Baljit singh (PW2) at the time when accused was apprehended he was on the motor cycle bearing No. PB 19 C 3236 and as per the statement of Karnail singh (PW5) said motor cycle is ownership of Karnail singh son of Gurnam singh, resident of Mangewal, which was registered on 1.3.2007 and is still in his name. He proved the copy of registration Ex. PW5/A. Therefore, separate proceedings for confiscation of the said vehicle are ordered to be intimated and this point is accordingly answered in favour of the prosecution and against the accused.

13 It is thus evident that the trial Court has considered the aspect of examination of independent witnesses and observed that when the independent witness was joined but not examined, being won over, did not make the prosecution case doubtful. The trial Court further held that in a case where independent persons are unwilling to cooperate with the investigation at the time of deposition before the Court, the prosecution cannot be blamed, and it cannot be a ground for rejecting evidence of official witnesses, which remains unshaken on the record. Learned legal aid counsel has failed to refer to any material to support the argument that

the non-examination of an independent witness has any impact on the outcome of the trial. The position in law is settled to the effect that even if no independent witness has been joined, the recovery, search and seizure may still be valid. The defence has not been able to shake the testimony of the official witnesses so as to discredit the admissibility and relevance of the same.

14 Further while adverting to the arguments of delay in sending the sample to the FSL, it has been noticed by the trial Court that delay in sending the sample to FSL when there was no evidence that the sample had been tampered with or any serious infirmities or violation of any statutory provisions took place, the delay in sending the sample alone was not sufficient to vitiate the prosecution case.

15 Further adverting to the argument regarding non-compliance of mandatory provisions of the NDPS Act, it has been noticed by the rial Court that ruqa Ex. PD was sent by the investigating officer of the case on the basis of which FIR has been registered, and as per the said ruqa investigating officer had specifically apprised the accused that he wanted to conduct his search and that of his motorcycle bearing No. PB 19 C 3236 Hero Honda, as he suspected some contraband in his possession and the accused was also apprised of his right to get his search conducted in the presence of a Magistrate. PW2 ASI Baljit Singh deposed before the trial Court that he apprised the accused to get his search conducted in the presence of a Magistrate, who could have been called at the spot and ASI Randhir Singh (PW6), witness to the recovery has corroborated the

statement of ASI Baljit Singh regarding compliance of mandatory provision of Section 50 of the Act.

16 Further, regarding conscious possession of the contraband, it has been noticed by the trial Court that possession in a given case need not be physical possession but can be constructive when the person has power and control over the article in the case in question.

17 Counsel for the appellant has not been able to point out any legal infirmity in the conclusions drawn. Thus, it is established that the trial Court has considered the arguments raised by the appellant and the evidence has been appreciated in the right perspective. The judgment of conviction dated 12.01.2011 passed by the Judge, Special Court, Barnala, in Sessions Case bearing No.35 dated 12.06.2009 arising out of FIR bearing No.25 dated 28.04.2009, under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Barnala, thus cannot be faulted with. The appeal thus deserves to be dismissed on its challenge to the conviction.

18 Adverting to the question of quantum of sentence, counsel for the appellant contends that the appellant deserves the benefit of reconsideration of the sentence that has been awarded by the trial Court. She contends that out of the total sentence of 3 years awarded to the appellant, the appellant had already undergone a period of custody of 1 year and 4 months before his sentence was suspended by this Court vide order dated 27.02.2012. It is submitted that the recovery was non-commercial and that the incident took place in the year 2009. A period of nearly 17 years has elapsed since then. The appellant has faced the agony of a protracted criminal trial for long. She further contends that, as per the custody certificate produced by the State, the appellant has not indulged in any other criminal offence and hence, he has integrated into society.

PARAMETERS AND PRINCIPLES OF SENTENCING:

19 The Hon'ble Supreme Court has laid down certain principles to govern the Courts in the matter of sentencing. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the matter of **State of Punjab Vs. Prem Sagar & Ors (2008) 7 SCC 550**. The relevant extract of the said judgment is reproduced hereinbelow: -

5. 'Whether the Court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstances of each case. While doing so, however, the nature of the offence said to have been committed by the appellant plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.

6. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.

7. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice-delivery system. Parliament, however, in providing for a hearing on sentence, as would appear from sub-section (2) of Section 235, sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the

Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the appellant being one of them.

8. Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the appellant is also relevant.

9. What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The Superior Courts have come across a large number of cases which go to show anomalies as regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine.

10. In Dhananjay Chatterjee Alias Dhana v. State of W.B. [(1994) 2 SCC 220], this Court held:

"15...Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime..."

11. Gentela Vijayavardhan Rao and Another v. State of A.P. [(1996) 6 SCC 241], following Dhananjay

Chatterjee (supra), states the principles of deterrence and retribution but the same cannot be categorized as right or wrong. So much depends upon the belief of the judges.

12. In a recent decision in Shailesh Jasvantbhai and Another v. State of Gujarat and Others [(2006) 2 SCC 359], this Court opined:

“7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of ‘order’ should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be--as it should be--a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the appellant, the nature of weapons used and all other attending circumstances

are relevant facts which would enter into the area of consideration.

Relying upon the decision of this Court in Sevaka Perumal v. State of T.N. [(1991) 3 SCC 471], this Court furthermore held that it was the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc.

xxx

18. Don M. Gottfredson in his essay on "Sentencing Guidelines" in "Sentencing by Hyman Gross and Andrew von Hirsch" opines:

"It is a common claim in the literature of criminal justice and indeed in the popular press that there is considerable "disparity" in sentencing. The word "disparity" has become a prerogative and the concept of "sentencing disparity" now carries with it the connotation of biased or insidious practices on the part of the judges. This is unfortunate in that much otherwise valid criticism has failed to separate justified variation from the unjustified variation referred to as disparity. The phrase "unwarranted disparity" may be preferred; not all sentencing variation should be considered unwarranted or disparate. Much of it properly reflects varying degrees of seriousness in the offense and/or varying characteristics of the offender. Dispositional variation that is based upon permissible, rationally relevant and understandably distinctive characteristics of the offender and of the offense may be wholly justified, beneficial and proper, so long as the variable qualities are carefully monitored for consistency and desirability over time. Moreover, since no two offenses

or offenders are identical, the labeling of variation as disparity necessarily involves a value judgment- that is, disparity to one person may be simply justified variation to another. It is only when such variation takes the form of differing sentences for similar offenders committing similar offenses that it can be considered disparate."

[Emphasis supplied]

The learned author further opines:

"In many jurisdictions, judicial discretion is nearly unlimited as to whether or not to incarcerate an individual; and bound only by statutory maxima, leaving a broad range of discretion, as to the length of sentence."

19. Kevin R. Reitz in Encyclopedia of Crime and Justice, Second edition "Sentencing guidelines" states:

"All guideline jurisdictions have found it necessary to create rules that identify the factual issues at sentencing that must be resolved under the guidelines, those that are potentially relevant to a sentencing decision, and those viewed as forbidden considerations that may not be taken into account by sentencing courts. One heated controversy, addressed differently across jurisdictions, is whether the guideline sentence should be based exclusively on crimes for which offenders have been convicted ("conviction offenses"), or whether a guideline sentence should also reflect additional alleged criminal conduct for which formal convictions have not been obtained ("non-conviction offenses").

Another difficult issue of fact-finding at sentence for guideline designers has been the degree to which trial judges should be permitted to consider the personal

characteristics of offenders as mitigating factors when imposing sentence. For example: Is the defendant a single parent with young children at home? Is the defendant a drug addict but a good candidate for drug treatment? Has the defendant struggled to overcome conditions of economic, social or educational deprivation prior to the offense? Was the defendant's criminal behavior explicable in part by youth, inexperience, or an unformed ability to resist peer pressure? Most guideline states, once again including all jurisdictions with voluntary guidelines, allow trial courts latitude to sentence outside of the guideline ranges based on the Judge's assessment of such offender characteristics. Some states, fearing that race or class disparities might be exacerbated by unguided consideration of such factors, have placed limits on the list of eligible concerns. (However, such factors may indirectly affect the sentence, since judges are permitted to base departures on the offender's particular 'amenability' to probation (Frase, 1997).)"

20. Andrew von Hirsch and Nils Jareborg have divided the process of determining sentence into stages of determining proportionality while determining a sentence, namely:

- 1. What interests are violated or threatened by the standard case of the crime- physical integrity, material support and amenity, freedom from humiliation, privacy and autonomy.*
- 2. Effect of violating those interests on the living standards of a typical victim- minimum well-being, adequate well-being, significant enhancement*
- 3. Culpability of the offender*

4. Remoteness of the actual harm as seen by a reasonable man.'

CONCLUSION

20 Keeping the aforesaid principles in mind, it is evident that the offence in question is not in the nature as would be dangerous to national integrity or shocking to the public conscience.

21 The object of punishment is not only to punish but also to rehabilitate the offenders in society. Where an appellant reflects a strong possibility of improvement and reformative behaviour, the process of law should come to the aid of such an appellant so as to ensure his reintegration into society.

22 I find that the prolonged incarceration, the protracted criminal trial and the consequent agony faced by the appellant, the actual sentence out of total sentence already undergone by the appellant, the reformative tendency shown by the appellant by not indulging in any other offence, the age of the appellant at the time of the incident as well as the legal principles reproduced above, are sufficient mitigating circumstances.

23 Consequently, finding no illegality, impropriety, perversity or failure to appreciate the evidence in its true perspective, or any reference to the material that the conclusions drawn by the trial Court are not borne out of the evidence adduced, the judgment of conviction dated 12.01.2011 passed by the Judge, Special Court, Barnala, is affirmed. However, the order of sentence dated 12.01.2011 is modified, and the sentence awarded to the appellant is reduced to the period already

undergone by him. However, the sentence regarding fine is maintained, and punishment in default thereof is also maintained. The fee of the legal aid counsel is assessed at Rs.11,000/-.

24 The present petition is accordingly **partly allowed**. A copy of this order be sent to the High Court Legal Services Committee for information and necessary action.

February 25, 2026.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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