

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

319

2026.PHHC.031982



CRA-S-405-SB-2011 (O&M)
Decided on: February 26, 2026.

MANJIT KAUR

...Petitioner

Versus

STATE OF PUNJAB

...Respondent

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

PRESENT Ms. Tejaswini, 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 02.02.2011 passed by the Judge, Special Court, Ludhiana, in Sessions case bearing No.412 dated 02.07.2004/RBT No.586 dated 22.01.2011 arising out of FIR bearing No.23 dated 11.03.2004, under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station Dakha, District Ludhiana, whereby the appellant has been convicted for commission of offence under Section 15 of the NDPS Act, for having been found in possession of 10 kgs. 200 grams of poppy husk and vide order of

even date has been sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/-.

2 The prosecution case, in brief, is that on 11.03.2004, ASI Jasmail Singh, accompanied by ASI Gurtej Singh, HC Baljit Kaur and other police officials, was present at Kailpur Chowk, Dakha, when he received secret information to the effect that the appellant, Manjit, was engaged in the sale of poppy husk from her residence and that, if an immediate raid were conducted, she could be apprehended. Upon finding the information to be credible and considering the urgency of the situation, ASI Jasmail Singh proceeded to conduct a raid at the appellant's house without obtaining a search warrant. Prior to effecting the search, he associated one Manjit Singh as an independent witness and joined him with the police party for the purpose of conducting the raid.

3 Upon the raid being conducted, the appellant, Manjit Kaur, was found present in her house. During the course of inquiry, she is stated to have made a disclosure statement (Ex. PC) to the effect that she had concealed a bag containing poppy husk beneath bricks in the cattle shed of her house and that she could get the same recovered. Pursuant to the said disclosure statement, the appellant led the police party to the indicated place and got recovered one bag, which, upon inspection, was found to contain poppy husk. Thereafter, ASI Jasmail Singh apprised the appellant of her right to be searched in the presence of a Gazetted Officer or a Magistrate. However, she is stated to have expressed confidence in the Investigating Officer and executed a consent memo (Ex. PD) in that regard. From the recovered bag, two samples of 100 grams each were

drawn and the remaining poppy husk was found to be 10 kilograms. The samples and the bulk contraband were converted into separate parcels and sealed by ASI Jasmail Singh with his seal bearing impression "J.S." The specimen seal impression (Ex. P1) was also prepared. After use, the seal was handed over to ASI Gurtej Singh. The samples and the case property were taken into possession vide recovery memo (Ex. PE). A photographer was requisitioned at the spot and photographs of the recovery proceedings were taken. Thereafter, the personal search of the appellant was conducted by HC Baljit Kaur, which resulted in the recovery of currency notes amounting to Rs.230/-, which were also taken into possession vide memo (Ex. PF). Subsequently, ASI Jasmail Singh sent a ruqa (Ex. PG) to the police station, on the basis of which formal FIR (Ex. PB/1) was registered by ASI Amarjit Singh. A site plan (Ex. PH) was prepared. The appellant was arrested vide memo (Ex. PJ) and further proceedings were conducted in accordance with law.

4 Subsequently, the report of the Chemical Examiner (Ex. PN) was received, wherein it was opined that the contents of the sample parcels were found to be poppy heads.

5 After completion of the investigation challan against the appellant was presented in the Court.

6 Upon consideration of the material placed on record and finding that a prima facie case was made out, the Trial Court framed charge against the appellant under Section 18 of the Narcotic Drugs and Psychotropic Substances Act. The appellant pleaded not guilty to the charge and claimed trial.

7 In order to establish the guilt of the appellant, the prosecution examined PW-1 HC Shamsheer Singh and PW-2 HC Jagdish Singh as formal witnesses, who tendered their respective affidavits (Ex. PA and Ex. PB) in evidence. The prosecution further examined PW-3 ASI Jasmail Singh, the Investigating Officer of the case; PW-4 ASI Gurtej Singh, a member of the raiding party and witness to the recovery; and PW-5 Inspector Amarjit Singh, the then Station House Officer of Police Station Dakha. These witnesses deposed on oath and supported the prosecution version. During the course of evidence, the prosecution also produced before the Court Ex. P2 and Ex. P3, being one of the samples drawn by the Investigating Officer at the spot and the representative sample drawn under the supervision of the learned Area Magistrate, respectively.

8 Upon closure of prosecution evidence, while recording her statement under Section 313 Cr.P.C. the appellant when confronted with evidence appearing against her, denied all the evidence and pleaded her false implication.

9 In defence, the appellant examined DW-1 Gursewak Singh. The said witness deposed that his father had two brothers, namely Mukhtiar Singh and Jharmal Singh, and that Manjit Kaur is the widow of Jharmal Singh. He further stated that all the family members were residing jointly and shared a common mess. The witness also deposed that approximately five and a half years prior to his deposition, police officials had taken Manjit Kaur from her house, and that no recovery was effected from her at that time.

10 The parties were heard by the trial Court and after considering the evidence adduced and the rival submissions advanced, the appellant was convicted for commission of offence under Section 15 of the NDPS Act, 1985 and sentenced as above. Hence, the present appeal.

11 Since there was no representation on behalf of the appellant, Ms. Tejaswini, Advocate, (PH-2802-2025; Mobile No.9872694049) 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. It has been argued by the learned legal aid counsel that the appellant has been falsely implicated in the aforesaid case and that the defence version has not been accepted by the trial Court without assigning any reasons. It is contended that the independent witness joined by the prosecution has not been examined. It is further argued that there was delay in sending the sample for chemical examination and that no explanation has come forth for the same. Further, it has been vehemently argued that there are arguable issues with respect to the exclusive possession of the house. The said premises are jointly owned and possessed by the appellant as well as her father and brother. Hence, the appellant cannot be assumed to be aware of the contents that were available in the house. She thus contends that considering the circumstances as aforesaid, the judgment dated 02.02.2011 convicting the appellant for the commission of offence under Section 15 of the NDPS Act as well as the order of sentence of even date, be set aside and the appellant be acquitted.

12 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 not only at the time of conducting raid but prior thereto. He contends that the said witnesses also appeared before the trial Court. He further contends that there is nothing on record on the basis whereof, it can be assumed that on account of the delay in sending the samples for chemical examination by a period of six days, there was any tampering or that the sample has been interfered 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 are suffering from incorrect appreciation of the evidence that has been adduced before the trial Court. Any minor discrepancies having no bearing on the outcome have to be ignored. Further, the trial Court specifically noticed the seal impressions having been in tact during the entire period and there was no tampering of the seized material. PW.2 Jagdish Singh specifically proved on record the fact of production of the case property before the area Magistrate for the purpose of drawing representative sample and passing orders regarding destruction of the case property. It is further submitted that the trial Court specifically noticed that Manjit Singh had been joined as an independent witness by the police party prior to conducting raid of the house and that he had witnessed the recovery memo and other documents. The non-examination of the witness would not disbelieve the sole testimony of the official witnesses before the Court. No infirmity or discrepancy in the statement of the witnesses produced by the prosecution before the trial Court has been pointed out, hence, the case of the prosecution cannot be faulted with.

13 He further submits that while dealing with arguments advanced by the appellant with respect to the house not being in exclusive possession of the appellant, the Court has specifically referred to the testimony of DW.1 Gursewak Singh. The same is considered by the trial court and it was noticed that the statement does not find corroboration from any witness and that even if it is assumed to be correct, yet, no word has been uttered as to why no effort was made at any point in time, by the appellant or any of her relatives to bring the said fact to the notice of the authorities. He contends that all the aspects have been duly considered and declined by the Courts.

14 I have heard the learned counsel appearing for the respective parties and have gone through the documents appended along with the present appeal.

15 Learned legal aid counsel has failed to refer to any material discrepancies that have occurred in the present case or any consideration or appreciation of the evidence on the basis of misreading whereof, the recovery or the proceedings may have a different outcome. Besides, a mere non-production of an independent witness without any final impact thereof would not be accepted in supersession of testimony of the official witnesses. The position in law is settled to the effect that even if there is no independent witness joined, yet, 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 same of its admissibility and relevance.

16 Consequently, finding no illegality, impropriety, perversity or the 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, I find that the present appeal lacks merits. The same is accordingly dismissed. The judgment of conviction dated 02.02.2011 passed by the Judge, Special Court, Ludhiana, is affirmed.

17 On being faced with the above, counsel adverted to the question of sentence. She submits that the quantum of punishment awarded by the learned Trial Court warrants reconsideration. It is contended that the appellant was sentenced to undergo rigorous imprisonment for a period of one year, out of which she has already undergone 05 months and 08 days of actual custody. The following mitigating circumstances are pointed out by her to consider the quantum of punishment: -

- a. The appellant has already undergone 05 months and 08 days of the total sentence imposed by the Trial Court and thus a substantial portion of the custodial sentence has been suffered.
- b. The occurrence in question dates back to the year 2004 and a considerable time has elapsed since the incident. Moreover, the accused has remained at liberty during the pendency of proceedings and has not misused such concession.
- c. The appellant has faced the protracted agony of criminal trial for more than 2 decades and the psychological and social

ramifications of facing criminal prosecution for such an extended duration constitute a relevant mitigating circumstance.

d. As per the custody certificate produced by the State, the appellant is not involved in any other criminal case. There is no material to suggest habituality or recurrence of criminal conduct.

e. The appellant has maintained good conduct throughout and is integrated into society. There is nothing on record to indicate any subsequent misconduct. The absence of antecedents and her continued social integration deserve a lenient and reformatory approach in the matter of sentence.

18 I have heard learned counsel for the parties on the question of sentence.

19 In the present case, there is nothing on record to reflect that the petitioner possesses a criminal bent of mind or that her conduct poses any threat to society. Hence, by the broader principles of criminal jurisprudence, no adverse presumption can be drawn against her.

20 This court, vide **judgment dated 14.11.2025 in CRR 2697 of 2025 titled as Lakshay Jain v State of Punjab & Another** has held as under: -

“32. The imposition of punishment is a refined judicial function that demands a careful harmonization of its underlying purposes namely, retribution, deterrence, and

reformation. This balance must reflect not only the reasoning of the Court but also the ethical standards and social context in which justice is administered. As societal values and circumstances evolve, the prominence accorded to each of these aims necessarily varies, requiring the Court to adapt its emphasis in response to the changing demands of justice. The aforesaid principle found early articulation in the writings of Justice Caldwell, who, in his authoritative work "Criminology," observed that:

"If the infliction of pain is to have its greatest effect upon the behavior of a person, it must follow soon after the act for which it is given. But punishment always takes place weeks or even months after the offense has been committed, since the offender must first be apprehended, tried, and convicted. Such delay tends to disconnect the punishment from the offense in the mind of the offender, and it may well be considered as merely another painful experience in an unjust world."

33. Moreover, Italian criminologist and jurist Cesare Beccaria, in his seminal treatise "On Crimes and Punishments," propounded the doctrine of penal parsimony, emphasizing that the justification of any criminal justice system rests upon its capacity to inflict the least possible evil necessary to achieve its ends. The underlying premise is that punishment, being in itself a necessary evil and devoid of inherent virtue, must be confined strictly within the bounds of necessity. The imposition of suffering or restriction upon an offender cannot extend beyond what is indispensable for the preservation of social order.

34. While 'retributive' object of sentencing is seen regressive, in modern day sentencing jurisprudence for its focus on punishing proportionally for the harm done and caters to the negative senses of spite and anger against a wrongful act, the

rehabilitative/reformative approach examines the circumstances surrounding the offender on social, economical, physical and psychological level so as to reintegrate the offender in the social mainstream. The law extends the benefit of good and perceives a probability and possibility of reform. It aims at capitalising a perceived social liability. The expectation of law is based on the surrounding circumstances to distinguish between a 'criminal' and an 'offender'.

35. While the pre-requisites of crime do not distinguish two persons, on the legal scale, this aspect is significant for sentencing. A mere involvement of a person in crime may not necessarily mark a person as a 'criminal.' 'Criminality' in mind and action has to be determined from the totality of circumstances including the mode and manner in committing an offence, the conduct pre and post the offence, the criminal antecedents, nature of involvement, influence of peers etc. and not just from an isolatory consideration of commission of an offence. A Court of law would not assume every offender to be beyond reform and differentiate in punishment on considering whether the offences arise due to human error or that stem from actions propelled by mens rea.

36. The case in hand is yet another where interest of justice would warrant a reformative approach in precedence to a punitive or retributive approach. It is not the function of the judges to seek the transformation of human nature itself, but rather to shape the framework within which individuals perceive that adherence to the law aligns with their own best interests."

21 Taking into consideration the facts and circumstances of the present case and the mitigating circumstances enumerated above, I find that the prolonged incarceration, the protracted criminal trial and the

consequent agony faced by the petitioner, the actual sentence out of total sentence already undergone by the petitioner, the reformatory tendency shown by the petitioner by not indulging in any other offence, the age of the petitioner at the time of the incident as well as the legal principles reproduced above, are adequate grounds for adopting a calibrated approach in the matter of sentence.

22 The present petition is accordingly **partly allowed**. While the judgment of conviction passed by the Judge, Special Court, Ludhiana, is affirmed, however, the order of sentence dated 02.02.2011 is modified and the sentence awarded to the appellant is reduced to the period already undergone by her.

23 The fee of the legal aid counsel is assessed at Rs.11,000/- (Rupees Eleven Thousand only).

24 A copy of this order be sent to the High Court Legal Services Committee for information and necessary action.

February 26, 2026.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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