

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

220

CRA-S-3412-SB-2012 (O&M)
Date of decision: 30.04.2026

Sarabjit Kaur ...Appellant(s)

VERSUS

State of Punjab ...Respondent(s)

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

Present :- Ms. Manveer Kahlon, Advocate for the petitioner(s).

Dr. (Ms.) Savi Nagpal, AAG Punjab.

VINOD S. BHARDWAJ, J. (Oral)

CRM-72638-2012

Application is allowed as prayed for subject to all just exceptions.

Main case:

1. The appellant has challenged the judgment of conviction and order of sentence dated 22.11.2012 passed by the learned Judge, Special Court, Amritsar whereby he was convicted in case bearing FIR No.35 dated 27.03.2007 registered under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 at Police Station Sultanwind, Amritsar, and sentenced as under :-

Section	Sentence and Find	In default thereof
18 of the N.D.P.S. Act	RI for a period of 1 ½ years and a fine of Rs.5,000/-.	RI for a further period 02 months.

2. Briefly stated, the facts of the present case are that on 27.03.2007, SI Jagdish Raj, along with other police officials, was on patrolling duty at T-Point, Khankot Bypass, when a secret informer provided information that Hardip Singh (since deceased), a resident of Batala, was habitually engaged in smuggling opium and that Sarabjit Kaur was associated with him in the said activity. It was further informed that both were travelling on a black motorcycle without a number plate and could be apprehended if a naka was laid on the G.T. Road bypass. Acting upon the said information, a naka was set up and an independent witness, Kirpal Singh @ Pala, was joined. Shortly thereafter, a motorcycle approached the naka. Upon being signalled to stop, the rider attempted to turn back abruptly, resulting in the pillion rider, Sarabjit Kaur, falling to the ground, while the rider managed to flee. Sarabjit Kaur was apprehended at the spot and the identity of the fleeing motorcyclist was disclosed as Hardip Singh. It is further the case of the prosecution that Sarabjit Kaur was found holding a black purse emitting the smell of opium. After informing her of her legal right to be searched in the presence of a Gazetted Officer or Magistrate, she opted for the presence of a Gazetted Officer. Accordingly, DSP Kulwant Singh was called to the spot and upon his arrival, the search of the purse was conducted in his presence. The purse was found to contain opium, from which two samples of 5 grams each were separated, while the remaining contraband weighed 490 grams. The recovered substance was duly sealed and necessary recovery proceedings were carried out. During investigation, Sarabjit Kaur disclosed that she, along with Hardip Singh, had earlier

brought a larger quantity of opium from Rajasthan and that the remaining contraband was concealed at his residence. Hardip Singh, however, could not be apprehended and later, after obtaining anticipatory bail, failed to join investigation and was subsequently reported to have been murdered. The case property was deposited in the police malkhana and the sample was sent to the Chemical Examiner, who confirmed it to be opium. Upon completion of investigation, the final report was presented before the learned Special Judge, Amritsar.

3. Upon completion of investigation and presentation of the final report under Section 173 Cr.P.C., charges were framed against the accused. The prosecution thereafter led its evidence and upon conclusion thereof, the statement of the accused was recorded under Section 313 Cr.P.C. In her statement, the appellant denied all the allegations levelled against her and pleaded innocence. It was her specific defence that she had been falsely implicated in the present case on account of a grudge harboured by ASI Harjit Singh, who was posted at Police Station Sultanwind. However, no evidence in defence was led by the appellant.

4. Parties were heard at length and upon consideration thereof, vide judgment dated 22.11.2012, the appellant was convicted for commission of offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Vide order of sentence of even date, the appellant was sentenced as above. Hence the present appeal.

5. Learned counsel appearing on behalf of the appellant has vehemently contended that the mandatory provisions of Section 42 NDPS Act and Section 50 NDPS Act have not been duly complied with, inasmuch

as the secret information allegedly received by the police was neither reduced into writing nor forwarded to the superior officers, thereby vitiating the entire recovery. It is further contended that there exist material discrepancies and inconsistencies in the testimonies of the prosecution witnesses, which cast a serious doubt on the veracity of the prosecution case. Learned counsel has also submitted that the appellant does not have any prior criminal antecedents.

6. Learned State counsel, on the other hand, has opposed the submissions advanced on behalf of the appellant and contends that the prosecution has been able to establish its case in its entirety. It is submitted that the prosecution examined four witnesses and also led cogent documentary evidence, which, when read cumulatively, sufficiently proves the guilt of the appellant. It is further contended that all the mandatory provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 were duly complied with during the course of search, seizure and investigation and no procedural infirmity can be attributed to the prosecution case. Learned State counsel has also argued that there is no material on record to suggest any ill-will, bias or ulterior motive on the part of the police officials or any other person to falsely implicate the appellant. In such circumstances, it is submitted that the conviction recorded by the Trial Court is based on proper appreciation of evidence and does not call for any interference.

7. At this stage, counsel for the appellant contends that she would not press the instant appeal on merits and would confine her challenge only to the quantum of punishment that has been so awarded. The following

mitigating circumstances are pointed out by the counsel for the petitioner:

- (i) The appellant is a woman of advanced age, presently about 67 years old and the occurrence in question dates back to March, 2007. Thus, a period of more than 19 years has elapsed, during which the matter has remained pending, warranting a humane and balanced approach in the matter of sentence.
- (ii) The appellant has faced the ordeal of protracted criminal proceedings for nearly two decades. Such prolonged pendency, accompanied by the anxiety and stigma of criminal prosecution, has itself operated as a significant deterrent and has had a punitive effect upon her.
- (iii) The incarceration suffered by the appellant has resulted in considerable hardship to her family, particularly keeping in view her age and familial responsibilities, thereby adding to the mitigating circumstances in her favour.
- (iv) It is not disputed that the appellant has no other criminal antecedents and is not involved in any other case, which reflects that the present occurrence is an isolated instance and that she does not pose any continuing threat to society.
- (v) The appellant has already undergone actual custody of 01 month and 18 days out of the total sentence of 1½ years, which, coupled with the long passage of time since the occurrence, merits consideration.

(vi) There is nothing on record to indicate that the appellant has, at any stage, misused the concession of interim bail granted to her, thereby demonstrating her adherence to the process of law and her bona fides throughout the proceedings.

8. I have heard the learned counsel for the respective parties and have gone through the documents as well as the judgment of the Court.

9. Insofar as the contention regarding non-recording of secret information in writing is concerned, the same does not merit acceptance. The present case is one of chance recovery, where the interception of the accused was not predicated upon any prior secret information. Consequently, the rigours of Section 42 NDPS Act, which mandate prior recording and communication of information, would not be attracted in the facts and circumstances of the case.

10. In view of the stand adopted by learned counsel for the appellant, whereby the challenge has been expressly confined to the quantum of sentence, this Court does not deem it necessary to delve into the merits of the conviction. Accordingly, the findings of guilt recorded by the learned Trial Court are not being re-examined and the present adjudication is restricted solely to the aspect of sentence.

11. This Court, in CRR-2697-2025 titled ***Lakshay Jain v. State of Punjab & Another***, vide order dated 14.11.2025, has held that sentencing must prioritise a reformatory approach, assessing an offender's background and circumstances rather than adopting a purely punitive stance. Mere involvement in an offence does not, by itself, establish criminality; instead,

the totality of circumstances including the manner of the act, antecedents, conduct, and intent must guide sentencing. The law, therefore, distinguishes between errors of judgment and acts driven by deliberate mens rea, recognising that offenders are often capable of reform and should not be presumed beyond rehabilitation. The relevant extract of the aforesaid judgment are as follows:

“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."

12. On the issue of reduction of sentence to the period already undergone, the judgment in ***S.K. Sakkar @ Mannan vs. State of West Bengal, (2021) 4 SCC 483***, is being referred to wherein the accused was convicted under Section 20 of the Act and Hon'ble Apex Court reduced the sentence of five years to 2 years, 4 months and 16 days, by considering that the occurrence took place in 1997 and he was not a habitual offender, rather a first-time convict.

13. Hon'ble Supreme Court in ***Satish @ Sabbe vs. State of U.P., (2021) 14 SCC 580***, had observed that, "*Whilst it is undoubtedly true that society has a right to lead a peaceful and fearless life, without free roaming criminals creating havoc in the lives of ordinary peace loving citizens. But equally strong is the foundation of reformatory theory which propounds that a civilised society cannot be achieved only through punitive attitudes and vindictiveness; and that instead public harmony, brotherhood and mutual acceptability ought to be fostered. Thus, first time offenders ought to be*

liberally accorded a chance to repent their past and look forward to a bright future". [Maru Ram v. Union of India, (1981) 1 SCC 107 : 1981 SCC (Cri) 112]".

14. In light of the circumstances noticed hereinabove and the settled position of law, I am of the opinion that the appellant has made out a case for reduction of sentence, particularly considering that she has already undergone a period of 01 month and 18 days out of the total sentence of 1½ years. Further, the appellant has endured the ordeal of a prolonged criminal trial spanning several years, which, in itself, has had a significant deterrent and reformatory impact. Having regard to her advanced age, socio-economic circumstances, absence of any criminal antecedents and the period of custody already undergone, this Court is satisfied that sufficient mitigating factors exist warranting a lenient view. Accordingly, the ends of justice would be adequately met by reducing the sentence of the appellant to the period already undergone. However, the fine imposed by the learned Trial Court is maintained in its entirety, along with the default stipulation attached thereto.

15. In view of the above, the present appeal is ***partly allowed***. While upholding the conviction, the order of sentence is modified and the order dated 22.11.2012 passed by the Judge, Special Court, Amritsar is reduced to the period undergone and the sentence of fine and custody in default thereof is maintained.

(VINOD S. BHARDWAJ)
JUDGE

30.04.2026

Mangal Singh

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