

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

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2026.PHHC.052406



CRA-S-840-SB-2015 (O&M)
Decided on: April 02, 2026.

RAKESH KUMAR

...Appellant

Versus

STATE OF PUNJAB

...Respondent

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

PRESENT Mr. J.S. Sandhu, Advocate, and
Mr. Akash Vashisth, Advocate, (Legal-aid-counsel)
for the appellant.

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

VINOD S. BHARDWAJ. J. (ORAL)

The instant appeal has been preferred against the judgment of conviction and order of sentence dated 18.11.2014 passed by the Special Judge, Sri Muktsar Sahib, in Sessions Case bearing No.32 of 2011, arising out of FIR bearing No.139 dated 01.12.2010, under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, (hereinafter referred to as the NDPS Act), registered at Police Station Sadar, District Sri Muktsar Sahib, whereby the appellant had been convicted for commission of offence under Section 22 (c) of the NDPS Act, and sentenced to undergo rigorous imprisonment for a period of ten

years and to pay a fine of Rs.1,00,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of one year.

2 Briefly summarised, the facts of the present case are that on 01.12.2010, ASI Jarnail Singh, along with a police party, was on routine patrolling duty when they noticed a young man, who upon seeing the police party, suddenly took a sharp turn in an attempt to evade them. Finding his conduct suspicious, the police officials apprehended him whereupon he disclosed his name as Rakesh Kumar, son of Des Raj. At the time of his apprehension, the said person was found holding a polythene bag in his right hand. Upon suspicion that he might be carrying a prohibited substance, search of the polythene bag carried by the appellant was conducted, leading to the recovery of 35 packets of intoxicating tablets bearing the mark "Microlit", each packet containing 100 tablets, thereby totalling 3500 tablets. From the recovered contraband, samples were drawn and sealed, while the remaining 3400 tablets (34 packets) were separately sealed and both the sample parcels as well as the bulk contraband were taken into police possession in accordance with law. The appellant failed to produce any licence or permit authorising possession of the said intoxicating tablets. Consequently, finding prima facie commission of an offence punishable under Section 22 of the NDPS Act, the appellant was taken into custody and the FIR in question came to be registered.

3 On registration of the FIR, investigation was conducted by the police, statements of witnesses were recorded and thereafter the final report under Section 173 Cr.P.C. was submitted. The case was committed to the Special Court by the Ilaqa Magistrate.

4 Upon consideration of the material placed on record, the trial Court found that a prima facie case was made out against the appellant for offence under the NDPS Act, 1985. Accordingly, charges were framed against him. The appellant pleaded not guilty and claimed trial.

5 To substantiate its allegations, the prosecution examined ASI Jarnail Singh as PW4, who deposed in detail with regard to the occurrence and the events including the seizure, as mentioned above. The Investigating Officer further deposed that upon inquiry and suspicion of possession of contraband, the appellant was apprised of his right of being searched in the presence of a Magistrate or a Gazetted Officer and a consent memo (Ex. P1) was prepared. The appellant reposed confidence in the search being conducted by the Investigating Officer. Thereafter, the polythene envelope in possession of the appellant was searched, resulting in recovery of 35 packets of tablets bearing the mark “Microlit”, each containing 100 tablets. Out of the recovered contraband, one packet containing 100 tablets was separated as a sample, while the remaining 34 packets were made into a bulk parcel. Both the sample and bulk parcels were duly sealed with seal bearing impression “JS”, and a sample seal chit (Ex. P2) was prepared. The seal after use was handed over to ASI Joginder Singh to obviate any possibility of tampering. PW4 further testified that the CFSL form (Ex. PW4/A) was prepared at the spot and the case property was taken into possession vide recovery memo (Ex. P3). A ruqa (Ex. PW4/B) was thereafter sent to the police station, on the basis whereof formal FIR (Ex. PW4/C) came to be registered by ASI Surjit Singh, with endorsement proved as Ex. PW4/D. The witness also proved the subsequent procedural documents, including the grounds of arrest memo

of the appellant (Ex. P4), personal search memo (Ex. P5), intimation memo (Ex. P6) and the rough site plan (Ex. PW4/E).

6 The Investigating Officer further deposed that upon return to the police station, he produced the appellant along with the case property before ASI Surjit Singh, the then officiating Station House Officer. The said officer, after verification, affixed his own seal bearing impression “SS” on both the sample and bulk parcels and also appended the same on the sample seal chit. The case property was thereafter taken into possession vide memo Ex. PW4/F, attested by the witness. It was further deposed that upon receipt of the report of the Chemical Examiner (Ex. PX), the final report was prepared and presented before the Court. The Investigating Officer also identified and proved the case property produced in Court, namely, the bulk parcel (MO1) and the plastic envelope (MO2).

7 PW5 ASI Surjit Singh, who was the officiating SHO at the relevant time, deposed that he had received the ruqa (Ex. PW4/B) sent by ASI Jarnail Singh, on the basis of which he formally registered the FIR (Ex. PW4/C) and made his endorsement (Ex. PW4/D) thereupon. He further stated that ASI Jarnail Singh produced before him the appellant Rakesh Kumar along with the case property, comprising a sample parcel containing one packet of Microlit tablets and a bulk parcel containing 34 packets of Microlit tablets, both sealed with the seal bearing impression “JS”. The specimen seal chit (Ex. P2), CFSL form (Ex. PW4/A), personal search memo and the investigation file were also produced. After verifying the facts and the case property, PW5 affixed his own seal bearing impression “SS” on the parcels as well as on the sample seal chit.

The case property was thereafter taken into possession vide memo Ex. PW4/F, duly attested by the Investigating Officer. PW5 further deposed that on the following day, he produced the appellant along with the entire case property before the Court of the learned Judicial Magistrate Ist Class, Sri Muktsar Sahib, along with a request/inventory report (Ex. PW5/A), upon which the learned Magistrate passed order Ex. PW5/C. He also proved that a special report (Ex. PW5/D) was sent to DSP Gurdeep Singh, who made his endorsement thereon as Ex. PW5/E.

8 The prosecution also examined ASI Joginder Singh as PW1, who deposed that he was a member of the police party headed by ASI Jarnail Singh at the time when the appellant was apprehended. He corroborated the version of the Investigating Officer and stated that upon suspicion, the appellant was apprised of his right of search and an option was extended to him to be searched in the presence of a Gazetted Officer or a Magistrate. However, the appellant expressed confidence in the Investigating Officer, whereupon consent memo (Ex. P1) was prepared. PW1 further deposed that upon conducting the search of the polythene envelope carried by the appellant, 35 packets of Microlit tablets were recovered, which were taken into possession vide recovery memo (Ex. P3), duly attested by him. He also proved the preparation of the sample seal impression (Ex. P2) and further identified and proved the documents relating to the arrest and investigation, namely, the grounds of arrest memo (Ex. P4), personal search memo (Ex. P5) and intimation memo (Ex. P6).

9 The prosecution also examined PW2 HC Kewal Singh, who tendered his affidavit (Ex. P7) and PW3 ASI Bashir Singh, who tendered

his affidavit (Ex. PW3/A), in order to establish and complete the chain of link evidence pertaining to the safe custody and transmission of the case property. Upon conclusion of the examination of the said witnesses, learned Addl. Public Prosecutor closed the prosecution evidence.

10 Statement of the appellant was then recorded under Section 313 Cr.P.C., wherein he was confronted with the entire incriminating evidence appearing against him. The appellant denied all such allegations and pleaded innocence. He set up a specific defence to the effect that no recovery was effected from his possession and that he had, in fact, been picked up by the police officials of Police Station Badal, led by ASI Mukhtiar Singh, from his residence at about 9:00 A.M. on 01.12.2010, in the presence of neighbours and other respectable persons of the locality and that the alleged recovery had been falsely planted upon him thereafter. To substantiate his plea, the appellant examined Kuldeep Singh as DW1. Upon conclusion of the said evidence, the defence evidence was closed.

11 Parties were heard at length and upon consideration of the same and evidence produced on record, the trial Court convicted the appellant for commission of the offence punishable under Section 22(c) of the NDPS Act and sentenced him as above. Hence, the present appeal.

12 Learned legal-aid-counsel appearing on behalf of the appellant has argued that the trial Court has failed to take into consideration the material irregularities in the prosecution case. It is contended that, notwithstanding certain discrepancies in the testimonies of the prosecution witnesses, the undisputed position emerging from the record is that the alleged recovery comprised 35 packets, each containing

100 intoxicating tablets. It is further submitted that none of the said packets bore any batch number or identifiable particulars such as manufacturing or expiry details. In such circumstances the investigating agency was required to prepare a homogeneous mixture of the entire seized material before drawing a representative sample for forensic examination. It is contended that, in the absence of such homogenisation, the sample sent to the Forensic Science Laboratory cannot be said to be representative of the entire bulk and consequently, the FSL report cannot be relied upon to determine the nature of the remaining 34 packets or to compute the total quantity of contraband recovered from the petitioner.

13 In support of the aforesaid contention, learned counsel has drawn attention to the testimony of PW4 ASI Jarnail Singh, the Investigating Officer, who, in his examination-in-chief, stated that out of the 35 packets of Microlit tablets, one packet was separated and converted into a sample parcel, while the remaining 34 packets were made into a separate bulk parcel and sealed independently. It is further pointed out that, in his cross-examination, the said witness admitted that the recovery memo (Ex. P3) did not mention the name of the manufacturing company or any details regarding the manufacturing or expiry dates of the tablets. Attention of this Court has also been drawn to the recovery memo (Ex. P3), to contend that even the said recovery memo does not contain essential particulars such as the batch number, name of the manufacturer or the date of manufacture and expiry of the tablets, which are crucial for proper identification and verification of the seized contraband. He further makes a reference to the testimony of PW5 ASI Surjit Singh, the then officiating SHO, who also corroborated that only one packet of Microlit

tablets was taken as a sample, while the remaining 34 packets were kept in a bulk parcel. The relevant extract of his cross-examination wherein he admits the said lapse is extracted as under: -

‘it is correct that there is no mention of manufacture and expiry dates and the batch numbers of the recovered articles in EX.PW4/F.’

14 It was further admitted by him in his cross-examination as under: -

“the 34 packets handed over to me were having 100 tablets in each respective packet. I cannot tell whether the contents of the sample parcel and bulk parcel were having the same batch number or not.”

15 Learned counsel has also contended that the document marked as Ex. PW4/A is merely a carbon copy of the FSL report and not the original report, thus even for the said account, the report could not be deemed to have been proved before the Court.

16 As per the said document, the laboratory received one parcel sealed with two seals bearing impressions “JS” and “SS”, which, upon opening, was found to contain 100 white coloured tablets in a packet labelled as “Microlit”. Upon analysis, the tablets were found to contain Diphenoxylate Hydrochloride (2.4 mg per tablet) and Atropine Sulphate (0.022 mg per tablet). It is, however, contended that even the FSL report (Ex. PX) does not make any reference to the batch number, manufacturing

date or expiry date of the tablets and merely records that the packet was labelled as “Microlit”.

17 Referring to the above, counsel for the appellant contends that even the aforesaid report does not make reference of any batch number, the details of the manufacturer or the expiry date of the contraband. In the given circumstances, the result of the forensic analysis cannot be projected and applied to the entire quantity allegedly recovered and the same has to be confined strictly to the sample that was sent for examination. Consequently, it is argued that the recovered contraband, for the purposes of determination, can only be considered to the extent of the sample analysed, i.e., 100 tablets containing 2.4 mg of Diphenoxylate Hydrochloride per tablet and not the entire bulk allegedly recovered.

18 Counsel contends that Standing Order No.1 of 1989 had been issued by the Government of India, Ministry of Finance (Department of Revenue). Clause 2.3 and 2.4 thereof lay down the procedure for drawing of the samples. The said guidelines are extracted as under: -

“2:3 The quantity to be drawn in each sample for chemical test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2:4 In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable

to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.”

19 Thereafter, Government of India, Ministry of Finance, (Department of Revenue) issued notification dated 23.12.2022 wherein certain provisions were elucidated.

20 He refers to Clause 10 of the instructions whereby the directions have been issued for drawing of samples. The same are extracted as under: –

“10. Drawing the samples. (1) One sample, in duplicate, shall be drawn from each package and container seized.

(2) When the packages and containers seized together are of identical size and weight bearing identical marking and the contents of each package give identical results on colour test by the drugs identification kit, conclusively indicating that the packages are identical in all respects, the packages and containers may carefully be bunched in lots of not more than ten packages or containers, and for each such lot of packages and containers, one sample, in duplicate, shall be drawn:

Provided that in the case of ganja, poppy straw and hashish (charas) it may be bunched in lots of not more than forty packages or containers.

(3) In case of drawing sample from a particular lot, it shall be ensured that representative sample in equal quantity is taken from each package or container of that lot and mixed together to make a composite whole from which the samples are drawn for that lot.

11. Quantity to be drawn for sampling. (1) Except in cases of opium, ganja and Charas (hashish), where a quantity of not

less than twenty-four grams shall be drawn for each sample, in all other cases not less than five grams shall be drawn for each sample and the same quantity shall be taken for the duplicate sample.

(2) The seized substances in the packages or containers shall be well mixed to make it homogeneous and representative before the sample, in duplicate, is drawn.

(3) In case where seized quantities is less than that required for sampling, the whole of the seized quantity may be sent."

21 It is contended that, in terms of Clause 10(2) of the applicable Standing Instructions, where multiple packages or containers seized are of identical size and weight, bear identical markings and yield identical results upon preliminary testing through a drug identification kit, thereby indicating that the contents are homogeneous in nature, such packages may be grouped into lots not exceeding ten units each. It is further stipulated that for each such lot, one representative sample in duplicate, is required to be drawn.

22 It is further contended that, in terms of Clause 10(3) of the applicable Standing Instructions, where a sample is to be drawn from a particular lot, it is incumbent upon the investigating agency to ensure that a representative quantity is taken in equal proportion from each package or container forming part of that lot. Such quantities are thereafter required to be mixed together to form a homogeneous composite, from which the final samples are to be drawn.

23 It is thus submitted that the sample drawn by the officials and as admitted by them in the cross examination has not been done by them in the form and manner as prescribed by the Government of India,

Ministry of Finance (Department of Revenue). He submits that firstly as there was no batch mark, the date of manufacturing, the details of the manufacturer or the expiry dates of the each of the packet under the said circumstances, it cannot be said that the packages are of identical size and weight bearing identical marks. He contends that each packet thus cannot be presumed to be giving identical results. It was thus required that the packages and containers should have been carefully bunched so as to make a homogenous mixture and thereafter to pick out the sample. The drawn sample thereafter had to be then sent to the FSL for chemical examination so that the test results could have been applied to compute the quantity of the seized contraband. In the absence of the same, only the results of the sample sent for chemical analysis can be applied for ascertaining the nature of the offence.

24 In support of his argument, he makes a reference to the judgment of this Court in the matter of **Deepak Kumar Vs. State of Punjab, passed in CRA-S-5190-SB of 2015 decided on 18.09.2024**. The relevant extract thereof is as under: -

“Sample procedure in respect of psychotropic substance.

26. In case no batch number is mentioned, in the recovered psychotropic substance, thus carried in the form of tablets/strips, thereupon at least one of the tablets from all the relevant strips rather is to be extracted, as residue sample and the same is required to be sent for testings being made thereovers, at the laboratory concerned. However, in case batch number is mentioned in all the recovered bulk strips, thereupon only one of the tablets in the entire haul is required to be sent for testings being made thereovers, at the laboratory concerned. However, the quantity of the sample

to be derived from the bulk is to be in terms of the provisions (supra), but with a further safeguard that not only vis-a-vis the entire bulk but also vis-a-vis the sample parcel, the relevant batch number is required to be made on the covers of each of the sealed cloth parcels.”

25 He further makes a reference to the judgment of this Court in the matter of **Jaspal Singh @ Pala Vs. State of Punjab, passed in Criminal Appeal No.CRA-S-1601-SB-2018 decided on 25.05.2022.** The relevant extract of the same reads thus: -

“27 The provisions of the NDPS Act are strict in application considering the gravity of offence, the punishment prescribed and the presumptions under Section 54 of the Act. The presumption is against the accused but the same is not absolute and is rebuttable. As the punishment prescribed under the Act increases with the increase in quantity and the sentence becomes more stringent, adequate safeguards, precaution and prudence is required to be established on record. The result of sample must be established by the prosecution in order to apply the said result of analysis to the entire seized quantity. For the same, homogeneity of the seized contraband is required to be proved to the satisfaction of the judicial conscience. The onus is on the prosecution to establish the said question of fact. Result of chemical analysis cannot be assumed to be applicable to the entire quantity of the seized contraband unless either the homogeneity of the sample is established or it is established that owing to the distinct identification features of a formulation, such result would be applicable to the entire haul it would not be safe to apply the sample analysis result to the total quantity seized.”

26 Referring to the above, counsel contends that the present appeal deserves to be allowed and appellant deserves to be acquitted.

27 He contends that in case the test results of the sample analysed by the FSL is taken into consideration, the quantity of seized contraband would be 7.4 grams which is an intermediate quantity. It is contended that the appellant was sentenced for a period of 10 years and that he has undergone a total sentence of 03 years 10 months and 04 days.

28 He further contends that there was a delay of 07 days in sending the sample parcel for examination by the FSL and that the delay is in violation of the Standing Orders issued by the Department for quick despatch of the seized parcels for chemical examination. It is further contended that no independent witness has been joined by the prosecution in the present case. It is further argued that Kuldeep Singh appeared in the witness box as DW-1 and he specifically deposed to the effect that the appellant had been picked up from home by the police officials.

29 State counsel, however, reiterates the findings recorded by the trial Court and contends that the packets were taken in possession in a sealed condition and they were all were all labelled as “Microlit” thereby indicating that the seized contraband was identical in nature and that the result of the analysis of the sample drawn would thus be applicable to the entire bulk of the seized contraband. She is, however, not in a position to dispute that there is no evidence on record on the basis whereof it may be assumed that the batch number, the date of manufacturing, the date of expiry and the details of manufacturer were mentioned on the each of the packets or that the same was mentioned either in the recovery memo or on

the parcel seized and sealed and sent for chemical analysis. She further does not dispute the applicability of the Standing Instructions governing the procedure for drawing of representative samples.

30 State counsel submits that the non-compliance of Section 52-A of the NDPS Act would not vitiate the trial. She refers to the judgment in the Supreme Court in the matter of **Bharat Aamble Vs. The State of Chhatisgarh, passed in Criminal Appeal No.250 of 2025, decided on 06.01.2025**. She, however, does not dispute that in the aforesaid judgment the sample was drawn after carrying out the homogenous mixture. Besides, the aforesaid Section deals with the disposal of narcotics and psychotropic substances and is not in relation to drawing of samples from the material initially seized by the Investigating Agency for the purpose of chemical analysis by the FSL.

31 She further refers to the order of Supreme Court in the matter **Mohinder Singh Vs. Jaswant Kaur (deceased) through LRs, passed in Civil Appeal NO.6706 of 2013, decided on 11.09.2019** to contend that even a carbon copy would be admissible in case the same is prepared by the same process and once the signatures appearing thereon are not disputed. Such a document would assume the character of original documents. Referring to the same, it is contended that even a carbon copy of the report had been prepared, at the same time as the original and that the aforesaid judgment become applicable as the authenticity of the signatures affixed on the carbon copy are not disputed. It would hence partake the character of an original document under Section 62 of the Evidence Act and would be admissible in evidence.

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

33 The Standing Orders issued by the Government of India, Ministry Finance (Department of Revenue), specifically mandates that in cases where the recovered contraband, in the form of tablets/strips, is suspected to be a prohibited substance, in such cases, at least one tablet from each of the relevant strips is required to be extracted and mixed so as to prepare a representative sample, which is thereafter required to be sent to FSL for analysis. It is further stipulated that, where all the strips bear the same batch number, indicating uniformity of composition, a single sample from the entire lot may suffice for the purpose of sampling and the result of such analysis may be applied to the entire seized contraband of that batch. Thus, the underlying principle of the said Standing Instructions is that, in order to extend the result of chemical analysis of the sample to the entire bulk of the seized material, it is essential for the prosecution to establish that the sample drawn is a true representative of the seized contraband as a whole and for the purpose of ascertaining the same, it must be established that the process of sampling ensures homogeneity and that the sample is relatable to the entirety of the seized contraband. In the absence of such compliance, the evidentiary value of the analysis, insofar as it seeks to cover the entire quantity, would stand materially diluted.

34 The relatability of the sample to the entire seized contraband can only be satisfied where essential particulars such as the name of the manufacturer, batch number, date of manufacture and date of expiry are

duly ascertainable from the seized material. These details are crucial to establish uniformity of composition across the seized quantity. If the same is not discernible from the seized packets, then in said circumstances, a homogeneous mixture is to be done and a sample is to be drawn thereafter. In the present case, the investigating officer does not dispute that no such exercise of homogenisation was undertaken. Further, the recovery memo EX.PW/F, as prepared by the prosecution also does not make any reference to the batch number, date of manufacture and date of expiry of the sample as well as the remaining contraband, hence, there is no material on record on the basis whereof, it can be assumed that sample of the seized contraband was a true representative of the total contraband that had been recovered by the State at the time of raid. Consequently, the results of the chemical analysis can only be confined to the sample contraband which was sent for analysis by the FSL. On weighment, the said sample corresponds to a quantity of 74,000 mg, i.e., 74 grams, which falls within the category of an “intermediate quantity” (non-commercial).

35 The guidelines issued by the Government of India vide its Standing Order No.1 of 1989 are even though labeled as guidelines but have more often been relied upon in numerous judgments as a procedure required to be mandatorily followed. When the offence is strict and punishment is severe and harsh, the investigating Agency has a stronger burden to discharge.

36 Even though when the entire seized contraband is labelled a “Microlit”, there may be a strong assumption that the entire material seized is the same, however, an assumption to a layman is not an

assumption in law. Such an “assumption”, however, strong, does not give rise to any legal or statutory presumption of the fact. A strong assumption may although give rise to a strong probability but it does not partake the character of proof and does not discharge the prosecution of the burden of proof cast upon it. Similarity of label, in the absence of complete particulars, does not, by itself, become identical content, in law.

37 Counsel for the appellant has not been able to dislodge the case of the prosecution so far as the recovery of the contraband from his possession is concerned. Further, a mere delay in sending the sample for chemical analysis, by itself, would not vitiate the chemical analysis, in the absence of any material brought on record by the defence to cast doubt on the integrity of the sample. Nothing has come on record, on the basis whereof, this Court may assume that the sanctity of the sample may have been interfered with during the time when it was lying in the police *malkhana* or when it was in possession of the person to whom it was handed over. The seals were found in-tact by the FSL, at the time of its receipt. Hence, the sanctity of the seized sample remained in-tact during the entire period.

38 No other irregularity or impropriety in the procedures required to be followed has been pointed out.

39 Having held so and considering that sample analysis cannot be made applicable to the entire quantity of seized contraband, the liability of the appellant is thus to the quantity sent for chemical analysis viz ‘100 tablets’ against one packet. The quantity recovered is ‘non-commercial.’

The appellant herein has been convicted for offence under Section 22(c),

which, as per the conclusion regarded above, would not be applicable since the quantity is 'non-commercial', the conviction of the appellant is thus modified from offence under Section 22 (c) to 22(b) of the NDPS Act.

40 The moot question which next comes before this Court is regarding the quantum of sentence prescribed. The appellant herein had been convicted and sentenced to undergo rigorous imprisonment for a period of 10 years under Section 22 (c) of the NDPS Act, however, as noticed hereinabove, the process of sampling suffered from a material irregularity, inasmuch as the homogeneity of the seized contraband was not established. In the absence of a homogeneous sample, the result of the chemical analysis cannot be extended to the entire bulk of the seized material. Consequently, the evidentiary value of the FSL report is required to be confined strictly to the sample that was actually analysed. On such reckoning, the quantity of contraband that can be legally attributed to the appellant is limited to the sample sent for analysis, i.e., 7.4 grams, which would fall under Section 22(b) of the NDPS Act, warranting a modification in the sentence.

41 It is contended that, in terms of the said provision, the offence in question is punishable with imprisonment which may extend up to ten years, along with fine which may extend to Rs.1,00,000/-.

42 At this stage, counsel for the appellant has drawn the attention of this Court to certain mitigating circumstances that would enure in favour of the appellant. The same are as under: -

a. The appellant was approximately 33 years of age when he was convicted and with the passage of nearly 12 years since then, the appellant is presently more than 44 years of age, placing him at a significantly different stage of life. The offence took place in 2010 and the appellant has suffered agony of criminal trial for nearly 16 years.

b. A substantial period has elapsed since the date of conviction, during which the appellant has reintegrated into the society, thereby reflecting a marked change in circumstances.

c. As per the custody certificate placed on record, the appellant has not been involved in any other criminal offence, either prior to or subsequent to the present occurrence, indicating clean antecedents and absence of criminal propensity.

d. The present case pertains to the first and only offence attributed to the appellant, which suggests that the incident was an isolated aberration rather than a reflection of habitual criminal behaviour.

e. The conduct of the appellant over the years demonstrates that he has reformed himself and has reintegrated into society as a law-abiding citizen.

f. There is nothing on record to suggest that the appellant poses any continuing threat to society or is likely to reoffend, thereby supporting a reformatory rather than a deterrent approach to sentencing.

g. The prolonged pendency of the appeal and the passage of time have themselves had a salutary effect on the appellant, serving as a form of deterrence and correction.

h. In the totality of the circumstances, the reformatory object of sentencing ought to be given due weightage and the sentence imposed upon the appellant deserves to be suitably reduced.

43 The State counsel has not been able to dispute the same.

44 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."

45 Adverting to the facts of the present case and the mitigating circumstances as pointed out by counsel for the appellant, it is established that the appellant has, undisputedly, faced the ordeal of a protracted criminal trial for a period of nearly 16 years. It is further evident that he has already undergone an actual custody of around 03 years 10 months and 04 days. Additionally, there is no material on record to indicate that the appellant has indulged in any other criminal activity subsequent to his release on bail, thereby reflecting a reformed conduct. These

circumstances demonstrate a clear reformative tendency on the part of the appellant.

46 In view of the aforesaid, I am of the opinion that adequate and compelling mitigating circumstances exist in the present case and the same call for interference with the quantum of sentence. The peculiar facts and circumstances, as noticed hereinabove, justify a modification of the sentence in the interest of justice

47 Taking into consideration the facts and mitigating circumstances relied upon by the appellant, I deem it appropriate to partly allow the present appeal. While maintaining the judgment of conviction, the order of sentence is modified. The sentence awarded to the appellant is accordingly modified and is reduced to the period already undergone by the appellant. The fine is also reduced to Rs.10,000/-. He shall be liable to pay fine of Rs.10,000/- and in case of failure to deposit the same, he shall be liable to undergo simple imprisonment for a period of two months.

48 The present petition is accordingly **partly allowed**.

April 02, 2026.
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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