IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRA-S-299-SB-2007 (O&M)
Date of decision: 10.03.2025

Satnam Singh

....Appellant

Versus

The State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Vasudha Sharma, Advocate (*Amicus Curiae*)
for the appellant.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR J. (Oral)

1. The prayer in the present appeal is to set-aside the judgment of conviction and order of sentence dated 05.12.2006 passed by learned Judge, Special Court, Jalandhar whereby the appellant was convicted and sentenced for the offence punishable under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter 'the NDPS Act'), in the case stemming from FIR No.89 dated 12.7.2002, under Section 15 of the NDPS Act at Police Station Nurmahal.

2. The appellant was sentenced as mentioned below:

Offence	Sentence
Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985	Rigorous imprisonment for a period of 1 year and 06 months and to pay fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for 03 months.

3. Brief facts of the case are that on 12.7.2002, a police party headed by ASI Joginder Singh was on patrolling duty and was present at bus-stand Samravan and when they were going towards village Daduwal, they saw the appellant travelling on a scooter carrying a bulky bag. On seeing the police party he became perplexed and tried to turn back, however, on the basis of suspicion, he was apprehended with 25 Kgs of Poppy Husk in the presence of Deputy Superintendent of Police and one sample of which was drawn from the bag. The sample of 250 gms was then sent to the chemical examiner for its examination and subsequently, FIR *(supra)* was registered under Section 15 of the NDPS Act.

4. Learned *amicus curiae* submits that the learned Court below has fallen into grave error in convicting the appellant, as his guilt has not been proved beyond reasonable doubt. She contends that the entire case of the prosecution is based on the testimonies of official witnesses without any corroboration. Further, one person namely Ravinder Singh was joined in the investigation being an independent witness, however, he was not examined by the prosecution. Additionally, there has been an unexplained delay of 26 days in sending the representative sample of the alleged contraband to the Chemical Examiner, which leaves it vulnerable to tampering. The mandatory provisions of the NDPS Act have also not been complied with. Learned *amicus curiae* also submits that a sentence of 01 year and 06 months had been imposed upon the appellant but he has already spent a period

of 02 years, 03 months and 29 days in custody. As such, he has been kept in custody for 09 more months than what was warranted.

5. *Per contra*, learned State counsel opposes the prayer of the appellant and submits that the appellant has been convicted by learned Additional Sessions Judge, Jalandhar vide judgment dated 11.07.2007 in a case stemming from FIR No.02 dated 08.01.2004 registered under Section 15 of the NDPS Act at Police Station Nurmagal, while, production warrants have been issued in another case stemming from FIR No.66 dated 22.03.2000 under Section 15 of the NDPS Act at Police Station Phillaur. He further submits that the learned Court below has passed a well-reasoned judgment based on correct appreciation of evidence available on record as such, and being a habitual offender, the appellant does not deserve any leniency.

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the appellant was convicted for being in possession of 25 kg of Poppy Husk, i.e. intermediate quantity, attracting the offence of Section 15 the NDPS Act. The contraband was recovered from a bag being carried by the appellant and no instance of personal search has been recorded. As such there was no need to issue notice under Section 50 of the NDPS Act. A two Judge Bench of the Hon'ble Supreme Court in ***State of Rajasthan vs. Parmanand and another (2014) 5 SCC 345*** speaking through Justice Ranjana P. Desai has held as under:

> *"15. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of*

> *the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, Respondent 1 Parmanand's bag was searched. From the bag, opium was recovered.His personal search was also carried out. Personal search of Respondent 2 Surajmal was also conducted. Therefore, in the light of the judgements of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application."*

7. Further, the independent witness is joined in the investigation as a measure of caution, in order to further buttress the case of the prosecution. Non-examination of the said independent witness can create a dent in the prosecution case but if the chain of events has been adequately proved, it would not prove to be fatal. Further still, the samples had their seals intact when they arrived at the office of the Chemical Examiner, as such, no evidence of tampering could be deduced. As such, this Court finds no perversity in the findings recorded by the learned trial Court as the same is based on correct appreciation of facts and the law.

8. However, a perusal of the custody certificate indicates that the appellant has spent 02 years, 03 months and 29 days in custody, while he was only sentenced to 01 year and 06 months of imprisonment in the instant case. Even if the 03 months awarded as sentence for default in payment of fine is considered, the maximum duration the appellant could have been kept in custody was 01 year 09 months. Learned State counsel could not bring forth any reason that could justify detaining the appellant for longer than warranted.

9. The law must be blind to wealth or status and, in line with the constitutional spirit, treat all individuals equally. However, in practice, disparities often emerge, especially between the rich and the poor. If the appellant had been in a better financial position, he or his family could have easily afforded legal representation to keep a tab on his detention and secure a timely release. However, lack thereof left him to remain in custody longer than legally sanctioned, at the mercy of the jail officials. This situation highlights a troubling gap where access to legal remedies is influenced not by the merits of the case, but by one's financial means. In the celebrated judgment of ***Hussainara Khatoon vs. Home Secretary, State of Bihar (1980) SCC 1 98***, a two Judge bench of the Hon'ble Supreme Court took note of the dire state of affairs with respect to under-trial prisoners languishing in jail, at times for durations even longer than the sentence that could have been awarded to them upon conviction. Speaking through Justice P.N. Bhagwati, the following was opined:

> *"6. Then there are several under-trial prisoners who are charged with offences which are bailable but who are still in jail presumably because no application for bail has been made on their behalf or being too poor they are unable to furnish bail. It is not uncommon to find that under-trial prisoners who are produced before the Magistrates are unaware of their right to obtain release on bail and on account of their poverty the y are unable to engage a lawyer who would apprise them of their right to apply for bail and help them to secure release on bail by making a proper application to the Magistrates in that behalf. Sometimes the Magistrates also refuse to release the under-trial prisoners produced before them on their personal bond but insist on monetary bail with sureties, which by reason of their poverty the under-trial prisoners are unable to furnish and which therefore, effectively shuts out for*

them any possibility of release from pretrial detention. This unfortunate situation cries aloud for introduction of an adequate and comprehensive legal service programme, but so far these cries do not seem to have revoked any response. We do not think it is possible to reach the benefits of the legal process to the poor, to protect them against injustice and to secure to them their constitutional and statutory rights unless there is a nationwide legal service programme to provide free legal services to them. ***It is now well settled, as a result of the decision of this Court in Maneka Gandhi v. Union of India, (1978) SCC 248 that when Article 21 provides that no person shall be deprived of his life or liberty except in accordance with the procedure established by law, it is not enough that there should be some semblance of procedure provided by law, but the procedure under which a person may be deprived of his life or liberty should be 'reasonable. fair and just. Now, a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would therefore, have to go through the trial without legal assistance, cannot possibly be regarded as 'reasonable. fair and just'. It is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court's process that he should have legal services available to him.*** *This Court pointed out in* ***M.H. Hoskot. v. State of Maharashtra, (1978)3 SCC 544****: "Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. Our judicature, moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer- power for steering the wheels of equal justice under the law".* ***Free legal services to the poor and the needy is an essential element of any 'reasonable, fair and just' procedure. It is not necessary to quote authoritative pronouncements by judges and jurists in support of the view that without the service of a lawyer an accused person would be denied 'reasonable, fair and just' procedure.***

xxx *xxx* *xxx*

8. ...There are numerous other instances which can easily be gleaned from the lists of under-trial prisoners filed on behalf of the State of Bihar, ***where the under-trial prisoners have been in jail for more than half the maximum term of imprisonment for which they could be***

> ***sentenced, if convicted. There is no reason why these under-trial prisoners should be allowed to continue to languish in jail, merely because the State is not in a position to try them with a reasonable period of time.*** *It is possible that some of them, on trial, may be acquitted of the offences charged against them and in that event the y would have spent several years in jail for offences which they are ultimately found not to have committed. What faith would these people have in our system of administration of justice? Would they not carry a sense of frustration and bitterness against a society which keeps them in jail for so many years for offences which they did not commit? It is therefore, absolutely essential that persons accused of offences should be speedily tried, so that in cases where bail, in proper exercise of discretion, is refused the accused persons have not to remain in jail longer than is absolutely necessary. Since there are several undertrial prisoners who have been in jail for periods longer than half the maximum term of imprisonment for which they could, if convicted, be sentenced, we would direct that on the next remand dates when they are produced before the Magistrates or the Sessions Courts the State Government should provide them a lawyer at its own cost for the purpose of making an application for bail and opposing remand provided that no objection is raised to such lawyer on their behalf and if any application for bail is made the Magistrates or the Sessions Courts, as the case may be, should dispose of the same in accordance with the broad guidelines indicated by us in our judgment dated 12th February, 1979. The State Government will comply with this direction as far as possible within a period of six weeks from today and submit report of compliance to the High Court of Patna."*
> (emphasis added)

10. In the same vein, a two Judge Bench of Hon'ble Supreme Court in ***Satender Kumar Antil vs. CBI*** **(2022) 10 SCC 51**, took note of the unnecessary detention of accused and issued directions to avoid non essential arrest as illiteracy or lack of financial resources qua one's rights should not be allowed to make one fall prey to the faults in the State machinery. Speaking through Justice M.M. Sunderesh made the following observations:

> *"6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other."*

11. Further, the sentence awarded by a trial Court comes after careful consideration of all relevant facts, legal arguments, and a dedicated sentencing hearing. It reflects a calibrated judicial decision that balances the gravity of the offence with the rights of the convict. Therefore, when a person is kept in custody beyond the term of the sentence awarded, it directly undermines the due process of law. Such extended incarceration, not sanctioned by any judicial order, amounts to a disregard for the authority of the Court and the rule of law.

12. State-inflicted injustice, such as unlawfully extending a person's custody beyond the sentence imposed by a competent Court, is a serious breach that cannot be condoned under any circumstances. The State, as the custodian of constitutional values, bears the highest responsibility to uphold the rights of its citizens which includes even those who are convicted of crimes. When the State itself becomes the violator of liberty through negligence or apathy, it sets a dangerous precedent that erodes faith in the justice system. Such violations are not

mere administrative lapses; they are acts of constitutional disregard that demand accountability, redressal, and systemic correction. Turning a blind eye to these injustices would not only embolden further violations but also diminish the very essence of a democratic society governed by the rule of law.

13. A three Judge bench of the Hon'ble Supreme Court in ***Rudul Shah vs. State of Bihar and another (1983) 4 SCC 141*** dealt with a similar matter where a convict was kept in custody for 14 years more than the sentence awarded to him and awarded compensation for the same. Speaking through Justice Y.V. Chandrachud, the following was opined:

> *"10.We cannot resist this argument. We see no effective answer to it save the stale, and sterile objection that the appellant may, if so advised, file a suit to recover damages from the State Government. Happily, the State's counsel has not raised that objection. The appellant could have been relegated to the ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the appellant files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate in the absence of evidence, the precise amount which would be decreed in his favour. In these circumstances, the refusal of this Court to pass an order of compensation in favour of the appellant will be doing mere lip-service to his fundamental right to liberty which the State Government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this Court were limited to passing orders of release from illegal detention.* ***One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violaters in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be***

corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the appellant's rights. It may have recourse against those officers.

11. Taking into consideration that great harm done to the appellant by the Government of Bihar, we are of the opinion that, as an interim measure, the State must pay to the appellant a further sum of Rs. 30,000/- (Rupees thirty-thousand) in addition to the sum of Rs. 5,000/- (Rupees five thousand) already paid by it. ***The amount shall be paid within two weeks from today. The Government of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent*** *:*

*12. T****his order will not preclude, the appellant from bringing a suit to recover appropriate damages from the State and its erring officials. The order of compensation passed by us is, as we said above, in the nature of a palliative.*** *We cannot leave the appellant penniless until the end of his suit, the many appeals and the execution proceedings. A full-dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudul Sah. The Leviathan will have liberty to raise those points in that suit. Until then, we hope, there will be no more Rudul Shahs in Bihar or elsewhere." (*emphasis added*)*

14. In the celebrated judgment of ***D.K. Basu vs. State of West Bengal (1997) 1 SCC 416***, a two Judge bench of the Hon'ble Supreme Court took note of the responsibility of the Courts to satisfy social aspirations of the citizens. Speaking through Justice Dr. A.S. Anand, the following was held:

*"54. Thus, to sum up, i****t is now a well accepted proposition in most of the jurisdictions, that monetary or pecuniary compensation is an appropriate and indeed an effective***

> ***and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts.*** *The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong-doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the criminal courts in which the offender is prosecuted, which the State, in law, is duty bound to do.* ***The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf.*** *The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit."*

15. Recently, a Division bench of the Bombay High Court in ***Prem Bangar Swamy vs. State of Maharashtra and others 2004(3) R.C.R.(Criminal) 780*** awarded an interim compensation of Rs.2,00,000/- to the appellant therein for deprivation of life and liberty due for the illegal detention suffered by her, due to fault on part of the jail authorities.

16. This Court would be remiss to ignore the ineptitude displayed by the District Legal Services Authority in this regard. The

concerned agency is required to demonstrate promptness so as to meaningfully ensure that convicts like the present appellant do not suffer unnecessary incarceration in already overcrowded prisons, for the time lost cannot be truly compensated.

17. In view of the facts and circumstances the case, the following conclusions are drawn:

i. The present appeal is dismissed being bereft of any merit. Pending miscellaneous application(s), if any, shall also stand disposed of.

ii. The appellant is awarded Rs. 3,00,000/- (Three Lakh rupees) as compensation. The same is to be paid by the concerned State government within eight weeks of receiving a certified copy of this order and file a compliance report in the Registry of this Court within four weeks thereafter.

iii. The State shall be at liberty to recover the amount awarded as compensation from the erring officials.

iv. The award of compensation by this Court shall not prohibit the appellant from pursuing civil remedies available to him to recover damages incurred.

18. The High Court Legal Services Authority is directed to pay remuneration to learned *Amicus Curiae* as per rules.

(HARPREET SINGH BRAR)
JUDGE

10.03.2025
yakub

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No