

CRA-D-445-2026

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-D-445-2026 (O&M)

JUDGEMENT RESERVED ON	JUDGEMENT PRONOUNCED ON	OPERATIVE PART PRONOUNCED OR FULL	UPLOADED ON
23.04.2026	15.05.2026	FULL PRONOUNCED	15.05.2026

Satyawan @ Satyaban

...Appellant

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Sandeep Kotla, Advocate
for the Appellant-appellant.

Mr. Yuvraj Shandilya, AAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
59	13.03.2019	Sadar Panipat	18 of NDPS Act 1985

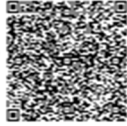
Criminal Case Number in the trial Court	NDPS Case No.RBT-290/2025 CIS No.40 of 2019
Date of Decision	08.01.2026

Convict's name	Penal provision	Sentence
Satyawan	18(b) of NDPS Act	RI for 20 years with a fine of Rs. 2,00,000/-

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1. The Appellant, having been convicted and sentenced as captioned above, has come up before this Court under Section 415 BNSS (374(II) CrPC), and also seeks suspension of his sentence under Section 430 BNSS, 2023 (389 CrPC).

2. On March 13, 2019, the investigator received secret information that the appellant Satyawan deals in the illegal cultivation of opium plants on the plot of his sister in the district of Panipat. Upon finding the information credible, the investigator reached the spot and found a person sitting in front of a room constructed on the said plot. The police apprehended the person in question, who identified himself as Satyawan. They also

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noticed a large number of poppy plants growing in that plot. After that, the investigator made a phone call to the Forest Officer, and based on his personal experience, he identified the plants to be those of opium poppy. After counting the number of plants that were planted, 152 were found, and the plants were taken into possession. After the investigation was completed, the prosecution commenced.

3. By impugned judgment dated January 8, 2026, the Ld. trial Court held the appellant guilty of possessing 152 plants of opium weighing 11.560 kilograms.

4. In paragraph number 23 of the impugned judgment the trial Court referred to the sub-clauses vii(a) and xxii(a) of Sections 2 of NDPS Act and came to the conclusion that the quantity more than 2.5 kg of opium shall fall in the commercial quantity and considering the weight of the plants to be 11.560 kg, the trial Judge opined that it fell into commercial quantity.

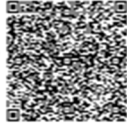
5. In paragraph 39 of the impugned judgment, the trial Court held that the appellant was found in possession of 11.560 kg of opium poppy plants (152 in number) and held him guilty of the offense punishable under section 18(b) of the NDPS Act.

6. After that, by order on quantum of sentence passed on Jan 12, 2026, the trial Court sentenced the appellant Satyawar under §18(b) of the NDPS Act and awarded him rigorous imprisonment for a period of twenty years, imposed a fine of ₹2 lakhs, and, in the event of default of payment of fine, further simple imprisonment for two years.

7. Learned counsel for the appellant-convict submits that there is patent illegality in the judgment of conviction and sentence because, in the case of a violation involving the poppy plants, the maximum sentence which could have been imposed cannot be what is prescribed for commercial quantities. Learned Counsel further submits that given this, the factum of the entire trial having been conducted under Section 18(b) of the NDPS Act and the consequent conviction and sentence under Section 18(b), where the minimum sentence that the Courts can impose is of mandatory minimum for ten years and which may extend to 20 years, and the sentence which was awarded in the present case to the Appellant was of 20 years, is absolutely illegal and contrary to the law.

8. Learned counsel for the appellant argues that although they did not challenge the charges, at the time of pronouncing the judgment, it was for the trial Court to have concluded as to what offense would be made out.

9. Ld. counsel for the convict submits that in the present case, the ends of justice would suffice if the judgment of conviction and order of sentence are quashed and set aside, and the matter is remanded back to the trial Court for re-hearing, keeping in view

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that the conviction could not have been passed under Section 18(b) of the NDPS Act even if there was evidence to prove the guilt (without conceding and admitting), and at the most the conviction could have been only for possessing the poppy plants which is the prosecution's case; and the accused if convicted could have been sentenced only for keeping poppy plants by treating the same as being covered under Section 18(c) of the Act, which was not done in the present case.

10. Ld. Counsel for the State of Haryana opposes all such arguments and submits that even if this Court eventually remits the matter, then the hearing has to be confined only to the relevant provisions, because the other findings regarding the guilt of the accused cannot be disturbed by the trial Court, and it is only for the Appellate Court to review.

11. An analysis of these arguments would lead to the following outcome.

12. Section 8 of the NDPS Act, which forms part of Chapter III that deals with Prohibition, Control and Regulation, explains the prohibitions regarding the poppy plants, and it reads as follows:

[8]. Prohibition of certain operations.—No person shall—

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

(c) produce, manufacture, possess, sell, purchase, transport, warehouse, use, consume, import inter-State, export inter-State, import into India, export from India or tranship any narcotic drug or psychotropic substance, except for medical or scientific purposes and in the manner and to the extent provided by the provisions of this Act or the rules or orders made thereunder and in a case where any such provision, imposes any requirement by way of licence, permit or authorisation also in accordance with the terms and conditions of such licence, permit or authorisation:

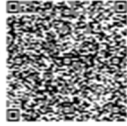
Provided that, and subject to the other provisions of this Act and the rules made thereunder, the prohibition against the cultivation of the cannabis plant for the production of ganja or the production, possession, use, consumption, purchase, sale, transport, warehousing, import inter-State and export inter-State of ganja for any purpose other than medical and scientific purpose shall take effect only from the date which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided further that nothing in this section shall apply to the export of poppy straw for decorative purposes.

13. Section 18 of the NDPS Act reads as follows:

[18]. Punishment for contravention in relation to opium poppy and opium.—

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, cultivates the



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opium poppy or produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses opium shall be punishable,—

(a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(b) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years, and shall also be liable to fine which shall not be less than one lakh rupees which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees;

(c) in any other case, with rigorous imprisonment which may extend to ten years and with fine which may extend to one lakh rupees.

14. Section 2 of the NDPS Act contains the definitions, and it reads as follows:

[2]. Definitions.—In this Act, unless the context otherwise requires,—

(xvii) “opium poppy” means—

(a) the plant of the species *Papaver somniferum* L; and

(b) the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted and which the Central Government may, by notification in the Official Gazette, declare to be opium poppy for the purposes of this Act;

(xviii) “poppy straw” means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom;

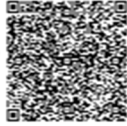
(xxiiiia) “small quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity lesser than the quantity specified by the Central Government by notification in the Official Gazette;

(viia) “commercial quantity”, in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette;

15. Since §18 deals with opium as well as opium poppy, it shall be relevant to refer to the notifications pertaining to opium and opium poppy, which make it a punishable offense under the NDPS Act.

Substance Name	"Opium"
Punishable U/s	S.18 of the NDPS Act, 1985

Drug's Small & Commercial Qty. suggested by the Committee report	
Notification No. & date	Expert Committee Report dated



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	24.03.1995 & 23.08.2001 (Small and Commercial)
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<i>Specified as small & Commercial in S.2(viia) & 2(xxiii) NDPS Act, 1985</i>		
Notification No. & dated	S.O.1055(E)	10/19/2001
Sr. No.	92	
Common Name (Name of Narcotic Drug and Psychotropic Substance (International non-proprietary name (INN))	Opium	
Other non-proprietary name	*****	
Chemical Name	And any preparation containing opium	
Small Quantity	< 25 Gram	
Commercial Quantity	> 2500 Gram	

Declared as punishable under the NDPS Act and as per the schedule defined in S.2(xi) & 2(xxiii) NDPS Act, 1985		
Notification No. & dated	S.18 & S.2(xv) NDPS Act, S.O.821(E)	11/14/1985

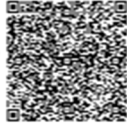
16. As per the notification of the Department of Revenue, Ministry of Finance, Government of India, dated October 19, 2001¹—*Note 3* in the end states:

(3) "Small Quantity" and "Commercial Quantity" with respect to cultivation of opium poppy is not specified separately as the offence in this regard is covered under clause (c) of section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

17. Thus, when the contravention involves any plant of the species *Papaver somniferum* L² and the plant of any other species of *Papaver* from which opium or any phenanthrene alkaloid can be extracted, and when these species, other than *Papaver somniferum* L, have been notified by the Central Government in the Official Gazette, declaring these species to be opium poppy for the purposes of this Act, these are punishable offenses under Section 18(c) of the NDPS Act.

¹ [egazette.gov.in/\(S\(bvlmzn0ndznbgr1ryu3huu34o\)\)/ViewPDF.aspx](http://egazette.gov.in/(S(bvlmzn0ndznbgr1ryu3huu34o))/ViewPDF.aspx)

² In State of Himachal Pradesh v. Nirmal Kaur and ors, 2023(2)RCR(Criminal)347; 2022-INSC -1121; CrA No. 956 of 2012, Decided on 20.10.2022, para 91, the Hon'ble Supreme Court holds, [91]. In the result, we hold that, once a Chemical Examiner establishes that the seized 'poppy straw' indicates a positive test for the contents of 'morphine' and 'meconic acid', it is sufficient to establish that it is covered by Sub-clause (a) of Clause (xvii) of Section 2 of the 1985 Act and no further test would be necessary for establishing that the seized material is a part of 'papaver somniferum L'. In other words, once it is established that the seized 'poppy straw' tests positive for the contents of 'morphine' and 'meconic acid', no other test would be necessary for bringing home the guilt of the Accused under the provisions of Section 15 of the 1985 Act.

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18. Section 18(b) of the NDPS Act applies when the contravention involves a commercial quantity. A perusal of the judgment clearly indicates that the accused was convicted and sentenced under Section 18(b) of the NDPS Act, but no reasoning has been mentioned on how the offense would fall under the said sub-clause. Thus, there is a patent illegality that must be addressed initially.

19. Article 20(1) of the Constitution of India guarantees a fundamental right with respect to penalty within the limits prescribed by the law, and it reads as follows:

[20]. Protection in respect of conviction for offences.—(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

20. Whenever the statute prescribes an upper limit on the sentence, no one can award a sentence even for one extra day. The judicial discretion is to prescribe a sentence less than the maximum if there is no mandatory minimum, but not even a day more than the maximum.

CRM No. 12690-2026

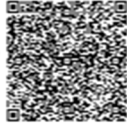
21. However, the Appellant/Applicant also seeks suspension of his sentence. Once we are prima facie of the opinion that, in light of the notification referred above, Section 18(b) would not attract and Section 18(c) of the NDPS Act would apply, which clearly provides that the maximum sentence of imprisonment the Court could impose is 10 years. In this case, by wrongly applying Section 18(b) and treating the plants as a commercial quantity—when the trial Judge not only imposed the minimum mandatory of 10 years but also extended it to the maximum of 20 years—we find it appropriate, before remanding, to suspend the sentence.

22. Given the above, the applicant shall be released on bail on furnishing personal bonds of rupees 1,00,000/- with one surety of Rupees 25,000/- to the satisfaction of the trial Court/Sessions Court.

23. The suspension of the sentence shall be subject to the condition that the accused/appellant shall attend the trial on each and every date, and also subject to the condition that he shall surrender back to the Court on the date of the pronouncement of sentence. Further, in case he is absent, the learned Counsel submits that he shall not claim any prejudice if the hearing takes place in his absence.

24. Since the trial has been delayed, we request that the trial Court expedite the hearing and close the matter as early as possible. If the applicant remains absent without a justifiable reason or unnecessarily delays the matter, it shall be permissible for the trial

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Court to cancel the bail bonds and remand him in custody.

25. Given the above CRM No. 12690-2026, application for the suspension of the sentence is allowed.

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26. We could have also taken the sentence for 10 years in the present appeal, but that would have been partly interfering with or tinkering with the judgment of conviction, which can only be done at the stage of final appeal. Thus, we are under compelling circumstances to remit the matter back to the trial Court only for the limited purpose of sentencing.

27. Coming to the appeal, in the entirety of facts and circumstances and the reasoning mentioned above, the present appeal is allowed to the extent that the reasoning for conviction will continue, but the trial Court shall rehear the parties and return the finding as to which part of the penal provision is applicable and shall sentence accordingly.

28. The matter is remanded back to the trial Court concerned. The Registry is to send a copy to the trial Court. Considering the time for which the matters were pending before this Court, we request the trial Court to resume the trial expeditiously.

29. CRA-D-445-2026 is disposed of in the aforesaid terms. All pending miscellaneous applications, if any, stand disposed of.

**(SUKHVINDER KAUR)
JUDGE**

**(ANOOP CHITKARA)
JUDGE**

May 15, 2026
Jyoti Sharma/Anju rani

Whether speaking/reasoned	YES
Whether reportable	YES