



2026:DHC:7578



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of reserving order: 14th August, 2026

Date of decision: 07th September, 2026

CNR No. DLHC010095332004

+ **CRL.A. 312/2004**

SUNITA

.....Appellant

Through: Mr. Dinesh Singh Bachgoti, Mr.
Kamlesh Kumar Verma, Ms. Deepali
Singh Advs.

versus

STATE (DELHI ADMN.)

.....Respondent

Through: Mr. Mukesh Kumar, APP for the
State with SI Rahul Ranjan, PS Harsh
Vihar.

CORAM:

HON'BLE MR. JUSTICE VIMAL KUMAR YADAV

JUDGMENT

VIMAL KUMAR YADAV, J.

1. Drifting away and leaving aside the grounds taken in the appeal, learned counsel for the Appellant sought a lenient view of the Court *vis-a-vis* the punishment. It is submitted that the judgment of conviction dated 31.03.2004 is not being challenged or so to say challenged on a limited ground that the Appellant was held guilty and sentenced under Section 20(b) of Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act') with the punishment of Rigorous Imprisonment (RI) for 01 year and fine of Rs. 5,000/- under Section 20(b) of NDPS Act and in default of payment of fine she was to further undergo Simple Imprisonment (SI) for five months.



2026:DHC:7578



According to the learned counsel for the Appellant, the contraband i.e. *Charas* found in possession of the Appellant was 105 grams which brings it into the domain of commercial quantity/renderers the Appellant liable for enhanced punishment, primarily and solely on the ground that it was 5 grams more than the quantity, which otherwise would have resulted into lesser punishment under Section 20(ii) (A) of NDPS Act. It is contended that the weighing scale which was used to weigh the contraband was not foolproof being manually handled, therefore, the 5 gram variation can easily be visualized.

2. It is thus, submitted that this margin of error can be taken into consideration and the Appellant may be considered for reduced punishment for possession of contraband of 100 gram instead of 105 grams. It is further contended that the Appellant is illiterate having responsibility of his handicapped husband, four children and parents-in-law, when the Appellant was punished in 2004. There is no substantial change so far as the family responsibilities except that the parents-in-law are no more and that children are no more financially dependent upon her.

3. Learned APP on the other hand, came up with the plea that the Appellant cannot put forth this argument nor can it be accepted in view of the fact that none of the witnesses have been given even a suggestion with regard to the flaw in the weighing apparatus. In such circumstances, when this plea was never ever taken, the Appellant cannot take the same at this stage.

4. Before adverting into the details of the contentions raised by the contesting sides, it is apt to have the facts of the case recapitulated. A secret, but very specific information was received by SI Sanjay Kumar on 02.10.2002 at about 2:15 PM when he was posted in PS Dilshad Garden,



2026:DHC:7578



that a lady would come at around 04:00 PM from the side of Jwala Nagar and go towards Khera Village via Railway Line Friends Colony, who would be carrying a contraband *Charas*. This information was recorded in the Daily Diary No. 11A of Police Station Dilshad Garden (Ex.PW-10/A), and was shared with the SHO and in turn with the ACP of the sub-division. Based upon the directions, SI Sanjay Kumar constituted a raiding party consisting of Lady HC Veena, Ct. Gavender, Ct. Suresh and the Informer. In order to bring the credibility to the case, certain public persons were requested to join the proceedings, but none except one Narender S/o Roshan Lal agreed.

5. On the pointing out of the Secret Informer, the Appellant herein, who was otherwise recognized by SI Sanjay Kumar to be the bad character (B.C.) of Police Station Dilshad Garden, the police party swooped down and apprehended foiling her attempt to escape.

6. The formalities before the search were carried out including serving a notice upon the Appellant under Section 50 of the NDPS Act (Ex.PW2/C), and the SHO and ACP were informed and they too came at the spot and in whose presence, search of the Appellant was carried out by WHC Veena. A bag containing a polythene packet was recovered from the Appellant containing 105 grams of *Charas*, out of which 50 grams was separately packed and sealed and subsequently sent to FSL. After the seizure, a case was registered under Section 20 of the NDPS Act and the contraband was deposited in police *Malkhana*, thereafter, other requisites of the investigations were completed.

7. The contraband was sent to the FSL after about 44 days. The chargesheet was filed under Section 20 of the NDPS Act. The FSL result confirmed the contraband as *Charas* (Ex.PW-1/A).



2026:DHC:7578



8. Based upon the contents of the chargesheet, the charge under Section 20 of NDPS Act was framed, to which the Appellant pleaded not guilty.

9. With the aid of 13 witnesses, the prosecution was able to establish the case inasmuch as the explanations offered by the Appellant in her statement recorded under Section 313 Cr.P.C. and the contentions raised on behalf of the Appellant were not found convincing by learned Trial Court, resulting into the conviction of the Appellant under Section 20(b) of NDPS Act.

10. As referred above, the challenge to the impugned judgment and order on sentence dated 31.03.2004 is confined to the aspect of defective weighing machine and resultant indulgence of this Court to seek lesser punishment by taking and treating the contraband less than 100 grams, taking it out of the domain of commercial quantity. The genesis of this argument is that the police separated 50 grams in one packet and sent it to the FSL, where the charas/packet was found to weigh 52.22 grams. Thus, the weight of the wrapper/polythene bag in which the *charas* was sent to FSL turned out to be 2.22 grams. So, a variation of 5 grams cannot be unexpected, but is very much possible.

11. Countering the contentions, it has been submitted by the learned APP, that the Appellant has questionable antecedents inasmuch as she is involved in 16 criminal cases, most of which are under the Punjab Excise Act, 1914, relating to the selling of illicit liquor etc., therefore, it is submitted that the Appellant does not deserve any indulgence on the aspect of the sentence.

12. Having considered the material on record, there is apparently no occasion to interfere with the conviction of the Appellant especially when it is not assailed. However, having regard to the contention raised that the contraband was weighed using a defective weighing scale, it becomes necessary to revisit the evidence on record qua the accuracy of weighing



scale and reliability of the quantity so determined, particularly for the purpose of examining the issue of sentence.

13. The Appellant's only argument on merits pertains to the recovery, which was described as "approximately" 105 grams and since 100 grams is the threshold for a small quantity of charas, therefore, she should get the benefit of that approximation owing to the manual weighing machine used for weighing. To strengthen this, the Appellant stated that the FSL report shows the packaging alone for 50 gm was 2.22 grams. As evident from para xiii of the appeal, where it opined, (*"It is clear that from the weight of polythene in which sample was sent to the laboratory and which was found 2.22 grams"*). It then estimates that the recovery item weighing twice as much, 105 grams must also include about 5 grams of polythene, if not more.

14. However, the FSL report nowhere states that the packaging weighed 2.22 grams; it records a total weight of 52.22 grams for the sample, including its packaging. The FSL report dated 03.01.2003 recorded the description of articles contained in parcel as follows:

"Packet- 'S-1': One cloth parcel sealed with the seals of PSH & SKS. It is found to contain exhibit 'S-1' kept in a polythene.

Exhibit 'S-1': Dark greenish brown coloured solid substance stated to be 'charas' weight approx. 52.22 gms with polythene."

Thus, the figure of 2.22 grams is the Appellant's own calculation, based upon the fact that 50 grams of charas was sent to FSL, so whatever more was nothing but the weight of the wrapper.

15. In any event, even if the Appellant's calculation is accepted, it does not advance her case. The FSL report records that the total weight of the



sample, including the packaging, as 52.22 grams. Thus, if 2.22 gram is treated to be the weight of the packaging, the remaining 50 gram represents the weight of the charas itself. This is precisely consistent with the testimony of PW3, PW6, PW7 and PW10, who have consistently stated that 50 grams of charas were sent to the FSL. Thus, far from demonstrating a defect in the weighing machine by drawing a mismatch on the samples sent and the FSL report, the consistency between the Appellant's own contention and the prosecution's evidence lend support to the accuracy of the weighing process, at least insofar as the 50 gram sample is concerned as argued by the learned APP.

However, there is a difference in carrying out tests measurement and weights in a controlled atmosphere, like in a Forensic/Scientific Laboratory. Those very things, when carried out in an open and exposed atmosphere, may yield results that vary. The weighing and sampling was done near a Railway track, and it is a matter of common knowledge that every time a train passes, the area around the railway track vibrates. This introduces a possibility of some element of error in weighing, even if the equipment, which was manual, was fully and actually functional. Five grams, which has overshoot the "small quantity" limit in the instant case, is a very insignificant weight otherwise. A possibility of error is, therefore, very much present.

16. As regards the antecedents relied upon by learned APP, the record before this Court, comprising the criminal dossier maintained in respect of the Appellant, discloses sixteen other matters, out of which, nine resulted in acquittal, two concluded in the Appellant being bound down rather than any conviction, and the remaining, being more recent, remain at the stage of arrest or bail with no conviction recorded. No other case among these sixteen has resulted in a conviction against the Appellant and none records



2026:DHC:7578



any prior conviction under the NDPS Act.

17. Turning to the custodial history, the record of the Superintendent, Central Jail No. 6, Tihar, confirms that the Appellant was in custody as an undertrial from 03.10.2002 to 31.03.2003, a period of five months and twenty-nine days. That period stands credited to her under Section 428 Cr.P.C. by the Trial Court's own order. Through this, what is clear and what matters for present purposes is that a substantial 50% of the sentence has already been undergone and any part left is a residual and modest one.

18. Twenty-four years have since elapsed from the registration of the case, and for this no fault is attributable to the Appellant, during which she has remained answerable to these proceedings and exposed to the prospect of surrendering to custody at its conclusion.

19. To this must be added the personal circumstances of the Appellant, Sunita, who, though illiterate at the time of trial, has through this entire period remained the principal caregiver for her handicapped husband, four children and parents-in-law. She seemingly shouldered this responsibility for quite a good time. Helplessness and vulnerability is writ large.

20. The proposition that prolonged pendency of criminal proceedings operates as an independent mitigating factor at sentencing is not new to this Court. In **Israfil alias Pappu alias Naimuddin Khan v. State of Madhya Pradesh**, 2026 SCC Online SC 1189 the Court observes that:

“in catena of cases before it, while maintaining conviction, the court had exercised its discretion and had reduced the substantive sentence considering long passage of time, absence of criminal antecedents and other mitigating circumstances. For instance, in Padum Kumar v. State of Uttar Pradesh, (2020) 3 SCC 35, while maintaining conviction for offences including Sections 467 and 468 of the IPC, it reduced the sentence considering the age of the matter, the sentence already undergone and taking into account the peculiar facts and circumstances of the case. The long lapse of



2026:DHC:7578



time without any material indicating repetition of similar criminal conduct is also a relevant consideration while molding sentence.”

21. Relying on the above, in **Jagdish Ram v. State of Punjab**, 2026 SCC Online P & H 23953, Justice Deepak Manchanda said:

"Where an accused has lived for years, or even decades, under the shadow of criminal proceedings, facing the uncertainty of the outcome and the social stigma associated with such prosecution, the said experience constitutes a significant factor that deserves to be taken into account while molding the sentence. The Hon'ble Supreme Court has further observed that such a principle is particularly applicable in cases involving non-heinous offences, where the ends of justice can be adequately served by adopting a reformatory and proportionate approach to sentencing rather than a purely retributive one."

22. This accord with the reformatory principles underlying the NDPS Amendment Act 9 of 2001, discussed by the **Delhi High Court** in **Indul Shah v. State**, 2017 in CrI. Appeal No. 455/2001, decided on 7th March, 2017. Under the 2001 Amendment Act, the Statement of Objects and Reasons records that while the Act envisages severe punishments for drug traffickers, it adopts a reformatory approach toward addicts and lesser offenders, rationalizing sentences into small, intermediate, and commercial categories precisely so that minor offenders are not exposed to disproportionate, harsh punishment. Reference can also be made to the judgment in **Sultan v. State**, 2004 (73) DRJ 460.

23. In the present case, the Appellant was a 26 year old poor lady at the time of trial, supporting four minor children, a disabled husband, and blind aged in-laws, and the quantity involved is 105 grams, which sits at the borderline of the small-quantity threshold. Subjecting her to rigorous imprisonment on these facts would run counter to the reformatory, rationalised approach the 2001 Amendment was designed to secure.



24. Further, the present case is of an offence of 2002, a conviction of 2004, and an appeal coming to be disposed of in 2026, presents a material aspect to be given some consideration. As regards her questionable antecedents, the Appellant has been acquitted in all cases except this present one. So essentially, the record is, in a way, unblemished and should be treated so.

25. In totality of the circumstances, the Appellant deserves some indulgence on the aspect of sentence. The first and foremost being the fact that the Appellant has confined her challenge to the aspect of sentence only, leaving aside the finding against her in the shape of judgment of conviction dated 31.03.2004. Secondly, a considerable time has elapsed from the date of commission of offence to this date and during this period, things must have changed for the Appellant, as they have changed for everybody. Although, not required to be considered, it cannot be ignored either that the independent public witness has stated that he was involved in the proceedings, but was then made to sign the documents as everything else was already done. Certain statutory compliances have been made, but seemingly for namesake. The Appellant was/is an illiterate poor lady, and her situation in the detention amongst the policeman can be very well visualised. In such circumstances, how far she had exercised, or been accorded her right relating to search, etc., is anybody's guess. In any case, not going into the details of the same, it is only the sentence which is required to be looked into, and as referred above, the Appellant deserves some indulgence. However, her antecedents have been brought in to show that she was involved in a number of violations under the Excise Act, although, no conviction has been recorded so far against her. Nevertheless, this is indicative of two facts that either she was involved, but could not be



2026:DHC:7578



convicted, or that she has been deliberately implicated in such cases. In such circumstances, it is appropriate to invoke Section 34 of the NDPS Act, which reads as under:

34. Security for abstaining from commission of offence.—(1)

Whenever any person is convicted of an offence punishable under any provision of Chapter IV and the court convicting him is of opinion that it is necessary to require such person to execute a bond for abstaining from the commission of any offence under this Act, the court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for abstaining from commission of any offence under Chapter IV during such period not exceeding three years as it thinks fit to fix.

(2) The bond shall be in such form as may be prescribed by the Central Government and the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall, in so far as they are applicable, apply to all matters connected with such bond as if it were a bond to keep the peace ordered to be executed under section 106 of that Code.

(3) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(4) An order under this section may also be made by an appellate court or by the High Court or Sessions Judge when exercising the powers of revision.”

26. It seems that the bond which would be furnished by her would be able to put a check and contain her wayward tendency, if at all it was there, and if not, then it is a kind of harmless assurance extended by the Appellant.

27. As such, the sentence of the Appellant is reduced to the period already undergone by her and is called upon to furnish a bond in terms of Section 34 of NDPS Act in a sum of Rs. 20,000/- for a period of two years before the learned Trial Court in the form prescribed under Form-1 Rule (2) of The Narcotic Drugs and Psychotropic Substances Act (execution of bond by the convicts or addicts), Rules, 1985. The sentence in respect of fine shall remain unaltered.



2026:DHC:7578



28. With the above observations, the appeal is accordingly, disposed of alongwith pending application(s), if any.

29. Copy of the judgment be transmitted to the learned Trial Court and the Prison Authorities for information and necessary compliance.

VIMAL KUMAR YADAV, J.

SEPTEMBER 07, 2026/hk/akc/vs/NY