

**Court No. - 15**

**Case :-** CRIMINAL REVISION No. - 833 of 2023

**Revisionist :-** Ajay @ Mewa Lal Pasi

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home Deptt.  
Lko. And Another

**Counsel for Revisionist :-** Neeraj Singh, Smriti

**Counsel for Opposite Party :-** G.A., Gulam Rabbani

**Hon'ble Karunesh Singh Pawar, J.**

***(I.A. No. 1 of 2023 - Bail application)***

Heard learned counsel for the revisionist as well as learned AGA for the State.

The present revision has been filed on behalf of the revisionist against the impugned judgment and order dated 28.06.2023 passed in Criminal Appeal No.11 of 2021 (Ajay @ Mewa Lal Passi Vs. State of U.P.) as well as order and judgment dated 25.03.2021 passed in Criminal Case No. 1643 of 2020 "State Vs. Ajay @ Mewa Lal Passi", arising out of Case Crime No. 1261/2019, under Sections 354 IPC, 354A IPC and 354-B IPC, Police Station Kotwali, District Unnao along with the further prayer to enlarge her on bail during the pendency of the revision.

Learned counsel for the revisionist submits that maximum sentence under the impugned judgment by the trial court is four years under Section 354-B IPC. Out of four years, the revisionist has already incarcerated for about three years. The revisionist is in jail since 10.12.2019. In case the applicant is enlarged on bail, he shall not misuse the liberty of bail.

Learned A.G.A. has opposed the prayer of revisionist and submitted that by way of categorical finding, the trial court convicted the revisionist and the judgment of the trial court was upheld by the appellate court, therefore, the revisionist is not entitled for bail, but he does not dispute this fact that out of four years of sentence, he has already incarcerated more than three years.

Considering the arguments of learned counsel for the revisionist as well as learned A.G.A. and facts and circumstances of the

case and the observations, as well as considering the fact out of four years of sentence, he has already incarcerated more than three years and without expressing any opinion on the merits of the case, I am of the view that the revisionist is entitled for bail.

Let the revisionist -**Ajay @ Mewa Lal Pasi** - be enlarged on bail in the aforesaid case crime, on her furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court concerned during the pendency of this revision.

***(Order on revision)***

1. Heard learned counsel for the revisionist, learned A.G.A. and perused the record.

2. Present criminal revision has been filed against the judgment and order dated order dated 28.06.2023 passed by the Additional Sessions Judge, Court No. 4/Special Judge, E.C. Act, Unnao in Criminal Appeal No. 11 of 2021 (Ajay @ Mewa Lal Passi Vs. State of U.P.) confirming the impugned judgment and order dated 25.03.2021 as well as order and judgment dated 25.03.2021 passed Chief Judicial Magistrate, Unnao in Criminal Case No. 1643 of 2020 "State Vs. Ajay @ Mewa Lal Passi" Police Station Kotwali, District Unnao whereby the revisionist convicted and sentence the revisionist under Section 354 IPC for three years RI with a fine of Rs. 10,000/-, under Section 354A IPC for six months RI with a fine of Rs. 2000/- and Section 354-B IPC, for four years RI with a fine of Rs. 10,000/- with default provisions in each of the offences.

3. At the outset, learned counsel for the revisionist submits that he is not challenging the impugned judgment and order of conviction and he is confining his submission only with respect to the order of sentence.

4. As per the prosecution case, it is alleged that the complainant Rooplal son late Babulal is a resident of Pasi Mohalla Nimbahara Gajra Karowan Police Station Kotwali District Unnao. On 09.12.2019, the complainant returned home from his duty at around 06:00 pm, after which he went out to the field to use the latrine. After returning from the toilet, I was returning home at about quarter to seven, when wife of Pappu Pasi told me that the sound of your sister Gungi Devi screaming was coming from the house, then he ran to his house and saw that in the room, his neighbor Kushal Pasi's grandson Ajay alias

Mewalal Pasi son of Prithvipal, was molesting the complainant's sister Gungi Devi, who has not been able to speak since childhood, and was tearing her clothes. The sister was shouting that Ajay alias Mewalal was groping her, which the complainant caught. When he was brought out of the house, the people of the locality came, then the complainant along with his family members caught Ajay and took him to the police station. On the above basis, a case of crime under section 354A and 354 of IPC was registered against accused Ajay alias Mewalal Pasi. After investigation, charge sheet was filed under sections 354Ka and 354 Kha. The accused was produced before the court. Charges were framed. He denied the charges and pleaded trial.

5. The prosecution has produced Statement of the accused was recorded under section 313 CrPC, who had showed ignorance. The trial court after considering the evidence adduced by the prosecution has found that the prosecution has been successful in proving the offence under section 354, 354A and 354B I.P.C. The criminal appeal preferred against the said judgment has been dismissed as referred to above.

6. After going through the entire evidence adduced by the prosecution, this Court comes to the conclusion that the prosecution has proved its case beyond reasonable doubt. There is no illegality in the impugned judgment.

7. Revisionist's counsel submits that the revisionist is not a previous convict. It is submitted that the revisionist is the first offender and he may be given the benefit of provisions of the Probation of Offenders Act, 1958 (in short, 1958 Act).

He further submits that in view of the facts and circumstances including the fact that the accused revisionist has not been convicted previously for any offence, the trial court ought to have invoked the provisions of the Probation of Offenders Act, 1958.

The Trial Court did neither invoke the provisions of the aforesaid Act nor the provisions of Section 360 Cr.P.C. while sentencing the accused-revisionist. The Trial Court has not given any special reason in the impugned judgment and order of conviction and sentence for not giving the benefit of provisions of Section 360 Cr.P.C. or the provisions of 1958 Act.

Learned counsel for the accused-revisionists submits that to that

extent, the impugned judgment and order suffers from serious illegality and therefore, it cannot be sustained.

The accused-revisionist has statutory right for claiming the benefit of beneficial legislation i.e. the provisions of the Act and the learned Trial Court was under a duty to consider the applicability of Section 360 Cr.P.C. or Section 4 of the Act. If the provisions of Section 360 Cr.P.C. or provisions of the Act were not applied, then the learned Trial Court should have recorded reasons for the same.

**8.** Learned AGA appearing for the State does not dispute the application of the provisions of Section 4 of the 1958 Act, as in view of the provisions of the said Act, power can be exercised, while if a person is found guilty of committing an offence not punishable with death or imprisonment for life and with regard to the facts and circumstances of the case, like nature of the case and character of the offender, the revisionist/accused can be given benefit of the said provision. He also does not dispute the fact that accused-revisionist is the first time offender and was not previously convicted in any other case.

**9.** I have considered the submission advanced by learned counsel for the parties.

**10.** In order to appreciate the argument advanced by the learned counsel for the parties, the provision of Section 4 of the 1958 Act is required to be appreciated with, which is quoted hereinbelow:

*"4. Power of court to release certain offenders on probation of good conduct.--*

*(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour: Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for*

*which he enters into the bond.*

*(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.*

*(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.*

*(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.*

*(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned."*

**11.** From perusal of the aforesaid provision, it is clear that the power is there with the Court to release a person on a bond of good conduct by extending the benefit of Section 4 of 1958 Act, if any person is found guilty of having committed an offence not punishable with death or imprisonment for life, but, at the same time, the Court will extend the benefit so provided under Section 4 of the Act, 1958 having due regard to the nature of the offence and the character of the offender.

**12.** In **Commandant, 20th Battalion, ITB Police versus Sanjay Binjola** 2001 SCC (Cri) 897, the Supreme court has held in para 7 as under :

*"7. Probation of Offenders Act has been enacted in view of the increasing emphasis on the reformation and rehabilitation of the offenders as a useful and self-reliant members of society without subjecting them to deleterious effect of jail life. The Act empowers the Court to release on probation, in all suitable cases, an offender found guilty of having committed an offence not punishable with death or imprisonment for life or for the description mentioned in Sections 3 and 4 of the said Act."*

The Supreme Court in **Paul George** versus **State of NCT of Delhi** 2008 SCC (Cri) 768 (para 12) has held as under :

*"12. This litigation has been going on for the last 20 years and has been fought tenaciously through various courts, we are also told that the appellant who has had a good career throughout but for this one aberration has since been dismissed from service on account of his conviction. We, therefore, while dismissing the appeal, feel that the ends of justice would be met if we direct that the appellant be released on probation under Section 4 of the Probation of Offenders Act, 1958 on conditions to be imposed by the Trial Court. The appeal is disposed of in the above terms."*

**13.** From the perusal of the impugned judgment(s), it is clear that none of the Sections in which the revisionist/ accused was convicted, entail the punishment of death or imprisonment for life. So, the nature of the offences is such, where this Court can give the benefit of the 1958 Act to the revisionist/accused.

**14.** In addition to the above, there is other circumstance which would warrant the application of Section 4 of the Probation of Offenders Act, 1958 to the facts of the case, i.e. the pendency of the criminal trial, appeal and revision against the revisionist/accused since more than a decade and he has undergone the trauma of the criminal trial for the last so many years, coupled with the fact that the revisionist/ accused has no criminal antecedents and even prior and after the aforesaid crime, this is the only offence which has so far been registered against the revisionist/accused.

**15.** In this view of the fact, this Court is of the opinion that there is no useful purpose for sending the revisionist/accused to jail for serving the sentence awarded by the Court below.

**16.** In view of the above, the criminal revision is partly allowed. Judgment and orders passed by learned trial court to the extent it convicts the revisionist, and learned appellate court are hereby affirmed. The conviction as recorded by the learned trial court to the extent it convicts the revisionist and learned appellate court shall remain intact. So far as the fine imposed by the learned Trial Court as well as affirmed by the learned Appellate Court is concerned, 50% of the fine is waived off considering the the fact that out of four years of sentence, he has already incarcerated more than three years.

However, so far as the sentence part is concerned, it is directed that the revisionist/accused shall be released on probation for a period of one year on furnishing a personal bond with two sureties to the satisfaction of the concerned trial court. The fine imposed by the trial court shall be deposited by the revisionist/accused within a period of one month, if not already deposited, from the date of receipt of this order, with the Court concerned. The concerned Magistrate shall be at liberty to impose such condition(s) while executing the bond which he feels fit in accordance with the law.

It goes without saying that if accused/revisionist fails to observe good conduct and behaviour during probation, or is found violating any condition to be imposed, the Court concerned shall be at liberty to cancel the bond of good conduct calling the accused/revisionist to serve out the sentence awarded by the Courts below. The revisionist shall be released on probation immediately once he executes the bond of good conduct before the court concerned as directed above.

**17.** Let a copy of this judgment, along with the LCR, if received, be sent forthwith to the learned trial court for information/compliance.

**Order Date :- 8.5.2024**

R.C.