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

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Date of Decision: 08.07.2015

Anil Kumar

... Petitioners (s)

Versus

State of Haryana

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Ajit Sihag, Advocate and
Mr. Saurabh Arora, legal aid counsel,
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Paramjeet Singh, J. (Oral)

Custody certificate of the petitioner, filed in Court today, is
taken on record.

Present criminal revision has been preferred by the
petitioner against judgment dated 08.09.2005 passed by learned
Additional Sessions Judge, Hisar whereby appeal preferred by the
petitioner has been dismissed and judgment of conviction and order of
sentence dated 10.07.2003 passed by learned Sub Divisional Judicial

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Magistrate, Hansi, have been upheld and the petitioner has been sentenced as under:

<i>U/S</i>	<i>Sentence</i>
<i>411 IPC</i>	<i>Rigorous Imprisonment for a period of two years and fine of ₹ 500/-, in default of payment of fine, to further undergo imprisonment for one month.</i>

I need not dilate upon the facts of this case in detail as the same have already been recapitulated in the judgment of the learned Courts below and in view of the ultimate prayer of the petitioner seeking reduction in sentence.

I have heard the learned counsel for the parties and perused the record.

Learned counsel appearing for the petitioner state that they are not pressing this revision on merit and are not challenging the conviction on merit. They are only aggrieved against the sentence part. However, they pray that the sentence of the petitioner be suitably reduced as this criminal trial is hanging on his head like damocle's sword for about 14 years and it should be a sufficient mitigating circumstance to treat him leniently. Learned counsel for the petitioner have further submitted that the FIR pertains to the year 2001 and since then a period of about 14 years has elapsed. The petitioner has suffered the ordeal for long period. Learned counsel for the petitioner further submit that the petitioner belongs to poor family and was 22 years old at the time of occurrence. The petitioner is a first offender and has not ever misused

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the concession of bail granted by this Court. The petitioner has already undergone the sentence for approximately five months. In support of his contentions, learned counsel rely upon *Ashok Kumar vs. State (Delhi Administration)* 1980(82) PLR 504, *Parmjit Singh vs. State of Punjab* 2003(4) Judicial Reports (Criminal) 636 and *Rajive Sandhu vs. State of Union Territory, Chandigarh* 2004(4) Judicial Reports (Criminal) 99.

Learned counsel for the State vehemently opposes the reduction in sentence.

I have considered the contentions raised by learned counsel for the parties.

Ancient penological approach was custodial measure to curb crime. But in modern days, penological approach should be balanced keeping in view the needs of the community and interests of the accused: such as compensation to the victims, release on admonition, probation etc. These are being adopted to reform the criminal convicts. The object of criminal justice system is to reform the offenders and to make them see and follow the right path. Otherwise also jails are often overcrowded.

It is pertinent to mention here that the petitioner is a first offender, was 22 years at the time of occurrence and has not ever misused the concession of bail granted by this Court. In *Ashok Kumar's case (supra)*, the Hon'ble Supreme Court has held as under:

“3. We do not deem it necessary to set out elaborately

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all the socio-legal facts which have been discussed at the bar. All that we need say is that the offence took place in 1971 and we are now in 1980. A long protracted litigation is some deterrent for a young man in his twenties. The accused was nineteen when the offences were committed and his youthful age is a factor which deserves consideration. A long period of incarceration in the present condition of prisons may brutalise the boy and blunt his finer sensibilities so that the end-product may perhaps be more criminal than the one at the point of entry. Not that all prison terms are not deterrent but some cases prove to be counter productive especially when the delinquent is young.

4. *It may be interesting to recall Lord Soper's observations in the House of Lords in a debate on British Prisons, where he said:*

"Now as to reform. I was a prison chaplain for 30 years. I cannot remember a single man who was reformed by being in prison-not one. I can remember those who, serving very short sentences, were for a time, perhaps, brought to recognise something of the gravity of what they had been doing; but I am completely convinced that the longer a man stays in prison, the longer he stays in that kind of incarceration, the less is the prospect of reform and the more certain is the process of decay. That is why I have consistently tried to say that any man who is imprisoned in one particular set of circumstances for more than five years is probably dead for life. It is highly unlikely that those who have endured that kind of monotonous deadening will be able to recover in the real world what they have lost in the artificial element and environment of prison life. There has been, I think, in my time, a considerable increase⁸⁶⁵ in the amelioration of conditions in prison; but, to refer again for a moment to the artificiality of it, the longer a man stays in prison the less capable he will be of recovering his place and establishing his

position back in the real world to which he is increasingly made alien by the very processes which he undergoes."

5. *Moreover, the appellant has already suffered nearly six months' imprisonment and it is a well-known fact for criminologists that the initial few months of jail life are the most painful and, therefore, the most deterrent. In the present case the offender having served a term of nearly six months must well have realised that the game of crime does not pay.*

6. *The fines of Rs. 2,000 and Rs. 500 imposed on the appellant should remain without interference. Payment of fine brings home the sense for responsibility in a surer fashion than even short terms of imprisonment in some cases. We, therefore, decline to reduce the fine and reject counsel's plea in this behalf.*

7. *More important than these circumstances is the social urgency of making this student offender a non-offender. There are two circumstances which weigh in our mind. The young man has married and has three children. This is a measure of assurance that he will not play recklessly with his freedom. Family life is ordinarily an insurance against a career of crime. We have also insisted on the uncle of the appellant undertaking to assure the good behaviour of the nephew who is the delinquent in question. The uncle Shri Kohli has filed an affidavit dated 10-12-1979 in this Court making the necessary undertaking to guarantee the good behaviour of his nephew. Thoughtless parents and guardians leaving a free hand for their wards account for flippant criminality of the type we come across in middle class society. The undertaking given by the uncle has,*

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therefore, considerable relevance. We make a breach of the conditions in the affidavit actionable on the motion of the State.

8. *It is a tragic reflection that affluent criminality should become so pervasive among the student community. It is uncomplimentary to the character-building component of the system of education in the prestigious institutions of our cities. We hope the State will take better care to instill a sense of values in the college campuses than it does now. We allow the appeals to the extent of reducing the sentence of the appellant to the period undergone, but maintain the sentences of fine and the alternative period of imprisonment in case of default.*

Appeals allowed.”

In view of the arguments advanced by learned counsel for the petitioner, which have been noted above, this Court is of the view that no useful purpose will be served by sending the petitioner behind the bars further as the petitioner has faced ordeal for about 14 years. It is a fit case wherein sentence awarded to the petitioner can be reduced to already undergone and in lieu thereof he can be burdened with fine of ₹ 5,000/- over and above already imposed. Ordered accordingly. The sentence of petitioner was suspended by this Court vide order dated 12.01.2006. The impugned order of sentence and conviction, including default clause, stand affirmed with aforesaid modification. It goes without saying that if the amount of fine is not deposited, the petitioner will serve the remaining part of sentence.

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With the above observations/modification of impugned order, present revision petition is disposed of.

08.07.2015
parveen kumar

(Paramjeet Singh)
Judge