

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

Criminal Revision No.1850 of 2010 (O&M).
Decided on:-April 27, 2016.

Rajender.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. R.S. Mamli, Advocate
for the petitioner.

Ms. Shaveta Sanghi, AAG, Haryana.

HARI PAL VERMA, J.

Petitioner Rajender son of Sheo Nath, resident of village Nadhori, Tehsil and District Fatehabad has filed the present revision petition against judgment dated 20.4.2010 passed by learned Sessions Judge, Fatehabad whereby his appeal against judgment of conviction dated 11.10.2008 and order of sentence dated 18.10.2008 passed by learned Chief Judicial Magistrate, Fatehabad was dismissed.

Briefly stated, FIR No.278 dated 12.7.2000 under Section 25 of the Arms Act, 1959 (for short, the Act) was registered against the petitioner at Police Station Sadar Fatehabad. As per the FIR, on 12.7.2000, SI Dharam Singh accompanied by his fellow police persons was going to village Bighar

for patrolling. One person was seen coming on feet on the side of Bighar. On seeing the police party, he turned back. However, considering his suspicious movement, he was apprehended. On enquiry, he disclosed his name as Rajender and on his personal search, it was found that he was keeping a country made pistol 315 bore in the left pocket of his pant along with two live cartridges which were recovered from the right pocket of his pant. The pistol along with cartridges was taken in possession vide separate recovery memo.

Investigation was conducted. Report under Section 173 Cr.PC was prepared and presented in the Court. Copy of the report was supplied to the accused free of costs as envisaged under Section 207 Cr.PC. On finding a prima-facie case against the petitioner, charge under Section 25 of the Act was framed against him to which he did not pleaded guilty and claimed trial.

In order to prove its case, the prosecution examined as many as six witnesses. Thereafter, statement of accused under Section 313 Cr.PC was recorded wherein entire evidence appearing against him on record was put to him. He denied the evidence of the prosecution and pleaded his false implication.

Learned Magistrate vide judgment dated 11.10.2008 held the petitioner-accused guilty and accordingly convicted him for commission of offence punishable under Section 25 of the Act and vide separate order dated 18.10.2008, sentenced him to undergo rigorous imprisonment for two years

and to pay a fine of Rs.1,000/-. In default of payment of fine, the petitioner-accused was further sentenced to undergo rigorous imprisonment for three months.

Aggrieved against the said judgment and order, the petitioner-accused filed an appeal before the Court of Session, but the same was also dismissed by learned Sessions Judge, Fatehabad vide judgment dated 20.4.2010. The petitioner-accused was ordered to be taken into custody for undergoing the sentence awarded by the trial Court.

It is in these circumstances, the petitioner has preferred the present revision petition before this Court.

This Court vide order dated 10.2.2011 admitted the present revision petition and suspended the sentence of petitioner during pendency of the petition. The petitioner was ordered to be released on bail to the satisfaction of Chief Judicial Magistrate, Fatehabad.

Learned counsel for the petitioner, during the course of arguments, has not challenged conviction of the petitioner and confined his arguments to the extent that considering the custody of the petitioner, the sentence awarded by the trial Court and affirmed by the appellate Court be reduced to the period already undergone by the petitioner. Learned counsel has submitted that as against the awarded sentence of 2 years, the petitioner has already undergone 11 months and 6 days. He has further submitted that the petitioner is a first time offender and is only bread earner of his family.

He has never misused the confession of bail during trial and there is no other case pending against him.

Learned State counsel, on the other hand, has filed the custody certificate, which has been taken on record. As per said certificate, the petitioner has undergone actual sentence for a period of 11 months and 6 days and there is no other case pending against him.

I have heard learned counsel for the parties.

This Court has scrutinized the impugned judgments passed by the Courts below as well as other relevant documents and evidence and finds that in view of the observations made by Hon'ble Supreme Court in ***Johar and others Versus M/s Mangal Prasad and another, 2008(3) SCC 423*** there is no scope of interference with the impugned judgments passed by the Courts below. Moreover, learned counsel for the petitioner has also not challenged conviction of the petitioner and confined his prayer to the extent of quantum of sentence only.

However, as regards plea of the petitioner that he is a first time offender; only bread earner of his family; never misused confession of bail during trial; no other case is pending against him and as against the awarded sentence of 2 years, he has already undergone 11 months and 6 days, this Court finds that prayer made by learned counsel for the petitioner carries weight.

Hon'ble Supreme Court in ***Harjit Singh Versus State of***

Haryana, (2002) 10 SCC 695 had reduced the sentence of 7 years under Section 25 of the Act to the period already undergone (more than 5 years) by the accused. Similarly, in the case of ***Kirpal Singh Versus State of Punjab 2009(1) AICLR 243***, this Court, taking into consideration the fact that petitioner has three children; there is no one to look after his family and has already undergone sentence of more than 5 months out of total sentence of one year, had reduced the sentence of petitioner to the period already undergone by him. Moreover, in the cases of ***Jagdeep Singh @ Neetu v. State of Punjab, 2013(2) Law Herald 1849*** and ***Sukhdev Singh Versus State of Punjab 2005(4) RCR (Criminal) 694***, similar view has been adopted by this Court.

Therefore, taking into consideration the pleas of petitioner and also the judgments referred hereinabove, though conviction of the petitioner is upheld but the sentence imposed upon him under Section 25 of the Act is reduced to the period already undergone by him, however, with no change in the fine clause.

With the aforesaid modification in the sentence, the present revision petition is dismissed.

April 27, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE