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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.REV.P. 680/2016 & Crl.M.A.16279/2016 & Crl.M.B.1851/2016
DAUD @ MAHMOOD Petitioner
Through : Mr. Krishan Kumar, Adv.
versus

STATE Respondent
Through : Mr. Sudershan Joon, APP with SI
Praveen Kumar PS Mandawali.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **19.10.2016**

Petitioner was convicted by the trial court under Sections 380 IPC and sentenced to undergo rigorous imprisonment for one year with fine of ₹3,000/- and in default of payment of fine to undergo simple imprisonment for 10 days. Petitioner preferred appeal before the Sessions Judge, which has been disposed of by the judgment dated 26th September, 2016, impugned in this petition under Section 397 of code of criminal procedure, 1973.

Prosecution story, as unfolded, is that on 23rd August, 2013, at about 3:45 pm, petitioner entered in the house of Sanjay Kumar Singh and took away a black bag containing 6 notes of ₹10/- denominations, 18 coins of ₹5/- and three coins of Rs.10/- besides one samsung mobile phone. On Mr.

Sanjay Kumar Singh raising alarm, petitioner was apprehended by the public which gathered there on hearing the alarm raised by the complainant. Bag was recovered from the petitioner. Police arrived at the spot and recorded the statement of Mr. Sanjay Kumar Singh, on the basis whereof FIR was registered. After completion of investigation, charge sheet was filed in the court of concerned Metropolitan Magistrate.

During the trial, star witness of the prosecution, that is, PW-1 Sanjay Kumar Singh has supported the prosecution version. The testimony of PW-1 has been found trustworthy and reliable by the trial court as well as appellate court. Trial court as well as appellate court have meticulously examined the evidence on record more particularly the testimony of PW-1 and have concluded that statement of PW-1 had remained unshattered in his cross examination and was trustworthy and reliable.

There are two concurrent findings of the courts below, which cannot be interfered with by the High Court, while exercising supervisory jurisdiction under Section 397 Cr.P.C. on appreciation of evidence. It is trite to say that in exercise of its revisional jurisdiction, High Court is not to sift and weigh the evidence on record as if the appeal and substitute a finding against what has been arrived by the two courts below after marshalling the evidence. Only

gross perversity in the findings as well as the procedural illegality, if any, has to be considered. High Court can interfere only if petitioner is able to demonstrate any flagrant violation or misuse of procedure in the order or that the settled legal position had been ignored. Petitioner has failed to point out any perversity and illegality in the impugned order resulting in miscarriage of justice. It cannot be said that the findings returned by the courts below are without any evidence and/or are perverse.

During the course of hearing, learned counsel for the petitioner has given up challenge to the conviction of petitioner on merits. He has only prayed for leniency in the sentence. As per the judgment of the Appellate court petitioner has to face rigorous imprisonment of 8 months. As regards, fine, same is stated to have been deposited. Petitioner is also facing sentence of 8 months in the case arising from FIR No.608/2015. It is made clear that sentence awarded in this case shall run concurrently with the other sentences awarded in the said case, that is, FIR No.608/2015, which have also been reduced to the period already undergone by the petitioner.

It is submitted that petitioner is a young man aged about 23 years and his old and ailing mother is dependent upon him, inasmuch as, petitioner is getting married on 25th October, 2016. Petitioner has already completed

sentence of 7 months and 10 days out of sentence of 8 months awarded to him.

Keeping in mind the totality of facts and circumstances, as detailed above, sentence of petitioner in this case is reduced to the period already undergone by him. Petitioner be released from jail, if not required in any other case.

Petition is disposed of in the above terms. Miscellaneous applications are disposed of as infructuous. Copy of the order be sent to superintendent jail for compliance.

A.K. PATHAK, J.

OCTOBER 19, 2016/dk