

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

Sr.No.208

Criminal Revision No.107 of 2018(O & M)

Date of Decision:17.11.2018

Mukhtiar Ahmed @ Kaka

....petitioner

Versus

State of Punjab

.....respondent

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Jashanjot Uppal, Advocate
for the petitioner

Mr.Manreet Singh Nagra, AAG Punjab

ARVIND SINGH SANGWAN, J. (ORAL):

Prayer in this petition is for setting aside the judgment dated 25.07.2016, passed by Sub Divisional Judicial Magistrate, Malerkotla, holding the petitioner guilty of offence punishable under Section 25 of Arms Act and the order of sentence of the even date, vide which the petitioner was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for fifteen days as well as the judgment dated 21.11.2017 passed by the Additional Sessions Judge, Sangrur, vide which the appeal filed by the petitioner was dismissed.

Brief facts of the case are that on 14.05.2012, ASI Ram Singh along with other police officials was going towards Amargarh side from Malerkotla, for patrolling duty. At about 7.30 PM when they reached near bridge in the area of Police Station City-1, Malerkotla, one person from

drain side came towards the road. On seeking the police party, he got perplexed and turned back. Being suspected, he was apprehended. Upon search, one country made pistol.315 bore got recovered from the left inner pocket of his pant, which was unloaded and one live cartridge .315 bore was also recovered. Two more live cartridges of .315 bore were also recovered from the right pocket of his pant. The rough sketch of the country made pistol was prepared and separate parcels were also prepared. Separate parcels of the live cartridges were also prepared and were sealed. The accused-petitioner could not produce any licence for having possession of the country made pistol. FIR No.45 dated 14.05.2016 under Sections 25/54/59 of the Arms Act was registered at Police Station City-1, Malerkotla, against the accused. On completion of the investigation, challan against the accused-petitioner was presented in the Court. Charges under Section 25 of the Arms Act were framed. The prosecution examined its witnesses and the prosecution evidence was closed. Statement of the accused under Section 313 of the Code of Criminal Procedure (in short, 'Cr.P.C.') was also recorded. No evidence was led in defence evidence. Thereafter, the petitioner was convicted by the trial Court and the appeal filed by the petitioner was also dismissed.

Learned counsel for the petitioner has placed on record a photocopy of the order dated 18.12.2017, passed by the Additional Sessions Judge, Sangrur, modifying the impugned judgement dated 21.11.2017 to the extent that FIR No.39 dated 14.05.2012 under Sections 25/54/59 of the Arms Act, registered at Police Station City-1, Malerkotla, be read in the aforesaid judgments instead of FIR No.45 dated 14.05.2016 under Sections

25/54/59 of the Arms Act was registered at Police Station City-1, Malerkotla, as wrongly noticed in the impugned judgements.

A perusal of the custody certificate shows that the petitioner is undergoing sentence in FIR No.39 dated 14.05.2012 under Sections 25/54/59 of the Arms Act, registered at Police Station City-1, Malerkotla.

Learned counsel for the petitioner, at the very outset submits that as on today out of one year rigorous imprisonment, awarded by the trial Court, the petitioner has undergone about 11 months and 05 days of total sentence, including remission and he is short of only 25 days to complete his entire sentence, therefore, the petitioner does not press the petition on merits. He further submits that the sentence awarded to the petitioner be reduced to the sentence already undergone by the petitioner.

Learned counsel for the petitioner further submits that the petitioner is the only bread earner in his family and he is to take care of his family. Learned counsel further submits that both the Courts below have not assigned any reason for not releasing him on probation and since the petitioner has undergone substantive sentence, his sentence be reduced to the period already undergone by him.

Learned State counsel, on the basis of the custody certificate dated 05.10.2018, has not disputed the fact that the petitioner has undergone 11 months and 05 days including remission out of one year rigorous imprisonment awarded by the trial Court and he is short of 25 days to complete his entire sentence.

I have heard learned counsel for the parties.

Considering the fact that the petitioner is not a previous convict

and has undergone almost his entire sentence and only 25 days are short to complete his sentence and also considering the mitigating circumstances explained by learned counsel for the petitioner, the present petition is partly allowed. The judgement of conviction and order of sentence passed by the Courts below are upheld. However, the order of sentence dated 25.07.2016 in FIR No.39 dated 14.05.2012 under Sections 25/54/59 of the Arms Act, registered at Police Station City-1, Malerkotla, is modified to the extent that the sentence awarded by the trial Court as upheld by the appellate Court is reduced to the sentence already undergone by the petitioner.

With the aforesaid observations, the petition stands partly allowed. The petitioner-Mukhtiar Ahmed @ Kaka who is in custody in FIR No.39 dated 14.05.2012 under Sections 25/54/59 of the Arms Act, registered at Police Station City-1, Malerkotla, be released forthwith, if not required in any other case.

(ARVIND SINGH SANGWAN)
JUDGE

17.11.2018

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Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No