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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 41/2018 & CRL.M.(BAIL) 72/2018**
RAJU @ PURSHOTTAM Petitioner
Through: Mr. Bharat Bagga and Mr.
Kushal Raj Tater, Advs.

versus

THE STATE GOVT OF NCT OF DELHI Respondent
Through: Mr. Kamal Kumar Ghei, APP
with SI Rambir Singh, PS
Subzi Mandi, Delhi

CORAM:

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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21.12.2018

1. The petitioner has filed the present petition under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 and assails the judgment and order dated 12.12.2017 passed by the learned Additional Sessions Judge in Criminal Appeal No.182/2017 as well as the judgment dated 29.7.2017 and order on sentence dated 1.8.2017 passed by Metropolitan Magistrate-07, (Central), Delhi in FIR No.61/2003 under Sections 326/34 of the Indian Penal Code ('IPC'), registered at PS Subzi Mandi and titled as "State v. Raju @ Purshottam".

2. The brief facts of the case are that, on 18.3.2003, SI Mahender received a call vide DD No.15A and he went to the spot from where he further proceeded to Hindu Rao Hospital and obtained the MLC of injured Shiv Shankar. Statement of the said injured person was recorded and FIR in the present case was registered against the petitioner. The Complainant vide his statement stated that on

18.3.2003, he was observing the people on the street below his house celebrating the festival of Holi and further came down to celebrate the same with the people. At that time, Vinod @ Chhotu and Raju, who are known to the complainant came there and began to abuse Lekh Raj and Sunil and when the complainant tried to intervene then Manish, brother of Vinod @ Chhotu who was carrying a knife in his hands attacked on the face of the complainant and hit the knife in the waist of the complainant. Complainant further stated that Raju and Vinod @ Chhotu held his hands. In this scuffle, Manish had injured Lekj Raj and Sunil as well.

3. The Trial Court, vide the judgment dated 29.7.2017, convicted the petitioner for the offence under Sections 326/34 of the IPC and vide the order on sentence dated 1.8.2017, ordered that the petitioner shall undergo rigorous imprisonment for a period of 3 years and a fine of Rs.10,000/- for the offence under Sections 326/34 of the IPC and in default of payment of fine, the petitioner was ordered to further undergo simple imprisonment for a period of three months. The petitioner thereafter, assailed the judgment dated 29.7.2017 and the order on sentence dated 1.8.2017. The Appellate Court vide order dated 12.12.2017 upheld the conviction, however, modified the sentence and reduced it to rigorous imprisonment for a period of 2 years and the fine of Rs.10,000/- for the offence under Sections 326/34 of the IPC was maintained by the Appellate Court. In default of payment of fine, the petitioner was ordered to further undergo simple imprisonment for 3 months.

4. Learned counsel for the petitioner further submitted that he is not arguing on the merits of the case and the petition may be treated as a mercy petition, taking into consideration the socio-economic condition of the petitioner as well as the fact that the petitioner is only 30 years old and he has a 3 year old child and the wife and child of the petitioner are living with the parents of the wife and are totally dependent upon them. The learned counsel for the petitioner has further submitted that the petitioner has no previous criminal antecedents or criminal case pending against him. Learned counsel for the petitioner also submitted that the petitioner has already paid the fine of Rs.10,000/-.

5. Learned counsel for the petitioner further submitted that the petitioner has already undergone more than one and a half years of his sentence and the conduct of the petitioner in jail, as per the nominal roll, is reported to be satisfactory, hence, a lenient view may be taken and the petitioner may be given a chance of reformation and reintegration into the society as its productive member.

6. Learned APP for the State, on query of the Court, stated that the conduct of the petitioner, as per the report, is stated to be satisfactory. Further, the learned APP, on instructions from the Investigating Officer ('IO'), submitted that the petitioner is having one small child of about 3 years old.

7. The IO, who is present in Court, also stated that the petitioner has no criminal antecedents.

8. Taking into consideration the factual matrix of the present case

as well as the socio-economic position of the petitioner, his satisfactory jail conduct, the period already undergone and the fact that the petitioner has no criminal antecedents or any criminal case pending against him, this Court is of the opinion that the petitioner should be given a chance for reformation and reintegration into the mainstream of the society as a productive member even otherwise considering his young age as well as the age of his child and the submissions made hereinabove, I am of the view that the sentence of the petitioner should be reduced.

9. Accordingly, having regard to the culpability of the petitioner and taking into consideration the aforesaid facts and circumstances, I am of the opinion that the ends of justice would be met if the sentence of the petitioner is modified to the period already undergone.

10. Consequently, the petition is allowed in part. The conviction order is maintained. However, the order on sentence by the Trial Court is modified to the extent indicated hereinabove.

11. Trial Court record be sent back forthwith along with a copy of this judgment. A copy of this judgment be also sent to the Superintendent, Tihar Jail for updating the record and for taking necessary action.

12. The petition is disposed of in the above terms. CRL.M.(BAIL) 72/2018 also stands disposed of.

CHANDER SHEKHAR, J

DECEMBER 21, 2018/rk