

\$~36

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.A. 772/2001 & CRL.M.(BAIL) 1972/2017
& CRL.M.A. 18289/2017
GULSHAN KUMAR @ MUNNA Appellant
Through Mr. Amit Satija, Mr. Ajay Satija,
Advvs.
versus

STATE Respondent
Through Mr. Panna Lal Sharma, APP for State

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER
% **13.04.2018**

In terms of the proceedings dated 05.04.2018 qua the submissions made on behalf of the appellant that the appellant has three grand children living with the daughter-in-law and wife of the appellant and the son of the appellant has expired, a verification / status report has been submitted by the State under the signatures of Inspector Anil Kumar, SHO PS Kirti Nagar, indicating thereby that the wife of the appellant Mrs. Radha Rani is 60 years and a housewife, his daughter-in-law Mrs. Indu Bhardwaj, aged 35 years and a housewife and that the appellant has three grand children (1) Himani Bhardwaj, aged 14 years (2) Vanshika, aged 10 years and (iii) Baljeet, aged 6 years and that the son of the appellant Pawan Kumar had expired in November, 2017 and was the only earning hand of the family and as per the verification / status report of the SHO PS Kirti Nagar presently in the family

CRL.A. 772/2001

page 1 of 5

of the applicant, there is no family member, who is working and earning money.

The appellant vide the impugned judgment dated 27.09.2001 of the then learned Additional Sessions Judge, Delhi in Sessions Case N. 102/97 along with three other convicts (1) Vijay Kumar @ Bhatta s/o Kundan Lal (2) Amrit Singh @ Jeetu s/o Mohan Lal and (3) Trilochan Singh @ Jaggi s/o Dayal Singh was convicted and sentenced to undergo Rigorous Imprisonment of three years and to pay a fine of Rs.1,000/- each under Section 304 part II of the Indian Penal Code, 1860 and to further undergo Rigorous Imprisonment for 2 months in default of payment of fine and all convicts were also sentenced to undergo Rigorous Imprisonment of six months under Section 341 of the Indian Penal Code, 1860 with it having been directed that the benefit of the period already undergone in judicial custody under Section 428 of the Code of Criminal Procedure, 1973 would be given. Along with the impugned judgment placed on record, as Annexure A3 to the appeal is the receipt issued indicating the deposit of the fine of Rs.1,000/- by the present appellant in terms of the impugned order on sentence dated 27.09.2001. The co-accused Vijay Kumar @ Bhatta s/o Kundan Lal and Trilochan Singh @ Jaggi s/o Dayal Singh have already expired as per the status report of SHO PS Kirti Nagar dated 08.01.2018 with the date of the demise of Vijay Kumar @ Bhatta s/o Kundan Lal being 13.12.2001 in the DDU Hospital and date of the demise of the Trilochan Singh @ Jaggi s/o Dayal Singh being 10.04.2010. Qua the other co-convict Amrit Singh @ Jeetu s/o Mohan Lal, it has been reported by the State in the

status report dated 08.01.2018 of the SHO PS Kirti Nagar that he was a vagabond earlier residing in Delhi at H. No. 9/76, Ramesh Nagar, Delhi with his parents and he was unmarried and that his behaviour was not good towards his parents and his father had sold the said property and shifted to Punjab, the address of which was not known by the State and his neighbour Smt. Gurdeep Kaur w/o Late Sh. Arvinder Singh had informed that the elder brother of Amrit Singh @ Jeetu took him to Punjab where he expired after few days in 2004 but there was no document available recording the death of the accused.

Submissions have been made on behalf of the appellant that all the convicts except the appellant had expired. The nominal roll that had been received from the Superintendent Jail, Central Jail No. 13 dated 02.01.2018 also indicates that no convicts were lodged in Tihar Jail.

Along with the status report submitted by the State dated 08.01.2018 and the copies of orders dated 11.01.2010 and 21.05.2010 in Crl. A 766/2001 filed by Vijay Kumar @ Bhatta s/o Kundan Lal and Crl. A. 760/2001 filed by Trilochan Singh @ Jaggi s/o Dayal Singh indicating that the said appeals have also abated in view of the verified factum of demise of the said two co-accused / appellants.

As per the nominal roll dated 08.03.2018, it has been received from the Superintendent Jail, Central Jail No. 13, the appellant as on the date 08.03.2018 had undergone the detention for the period 1 year and 2 days with the unexpired portion of sentence on the said date 2 years 8 months and 19 days. As of date, the appellant has thus undergone incarceration of 1 year 1 month and 4 days.

On behalf of the appellant, it has been prayed that the appellant be allowed to be released on the period of detention undergone.

In view of his family status having been verified by the SHO PS Kirti Nagar which indicates that his family is in a dire state with their being no one to look after the wife of the appellant, the daughter-in-law of the appellant and three grand children of the appellant in as much as the only son of the appellant has also expired in November, 2017.

The appellant is indicated to be a first time offender as per the order on sentence dated 27.09.2001. Taking the verification / status report of the State in relation to the family condition of the appellant whilst upholding the impugned judgment of conviction dated 25.09.2001, in view of the evidence on record as analyzed vide the impugned judgment, the impugned order on sentence dated 27.09.2001 sentencing the convict / appellant to undergo Rigorous Imprisonment of three years apart from payment of fine which has also been paid of Rs.1,000/- and Rigorous Imprisonment of 6 months for the offence under Section 341 of the Indian Penal Code, 1860 is notified to be punishable under Section 304 part II of the Indian Penal Code, 1860 to a period of one year and 6 months of Rigorous Imprisonment, the sentence in relation to 1 year and 3 months of Rigorous Imprisonment with the fine having already been deposited and the sentence of Rigorous Imprisonment of 6 months under Section 341 of the Indian Penal Code, 1860 is maintained as held vide the impugned order on sentence dated 27.09.2001, both the sentences shall run currently with the benefit of the period of detention already undergone in terms of Section 428 of the Code of Criminal Procedure, 1973 being granted to the appellant. The appeal is disposed of

accordingly.

Copy of this order be sent to Superintendent Jail, Delhi for release of the appellant after a period of incarceration of one year and three months.

ANU MALHOTRA, J

APRIL 13, 2018/MK

CRL.A. 772/2001

page 5 of 5