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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 1142/2017, CRL.M.(BAIL) 2201/2017

& CRL.M.A. 20440/2017

ANIL KUMAR

..... Appellant

Through Mr. Habibur Rahman, Adv.

versus

STATE

..... Respondent

Through Mr. Ashish Dutta, APP for State

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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12.03.2018

Vide the present appeal, the appellant has assailed the impugned judgment dated 14.03.2017 and impugned order on sentence dated 15.03.2017 of the Court of learned ASJ, Special Judge, NDPS-02, (Central), Tis Hazari Courts, Delhi in SC No. 14/16 in FIR No. 650/15, PS Old Delhi Railway Station u/s 395 of the Indian Penal Code, 1860 whereby the appellant was convicted and held guilty for the offence punishable under Section 394 of the Indian Penal Code, 1860 for robbery of Rs.11,000/- and for the hurt caused to the victim at the time of commission of robbery and vide the impugned order on sentence dated 15.03.2017 was sentenced to undergo Rigorous Imprisonment for a period of two and a half years and to pay a fine of Rs.11,000/- and in default of the payment of the said fine to undergo Simple Imprisonment for one month for the offence punishable

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under Section 394 of the Indian Penal Code, 1860 which it having been held that the impugned order dated 15.03.2017 to the effect that the appellant is in custody w.e.f. 16.10.2015 and was to be granted the benefit of Section 428 of the Criminal Procedure Code, 1973.

During the course of the present proceedings, the nominal roll has been received which indicates to the effect that the appellant had undergone incarceration for a period of 2 years and 2 months and 24 days as on the date 10.01.2018 i.e. the date of the nominal roll and had also earned a remission of 2 months and 11 days. It has thus been submitted on behalf of the appellant that the period of sentence as imposed vide the impugned order on sentence dated 15.03.2017 of 2 years and 2 months has already elapsed.

Vide proceeding dated 11.01.2018, the report was called from the learned Trial Court through special messenger as to whether the amount of fine of Rs.11,000/- imposed vide order dated 15.03.2017 in FIR No. 650/15, PS Old Delhi Railway Station had been deposited qua which the copy of the fine register of learned Trial Court has been received indicating that the fine of Rs.11,000/- was not deposited.

Learned counsel for the appellant submits that even if the period of one month which the appellant had to undergo qua the default in payment of fine is to be taken into account even the said period of one month has since elapsed in view of the remission granted to the appellant as per the nominal roll in view of his satisfactory conduct at the Mandoli Jail during the period of incarceration as per the report of the Superintendent, Central Jail No. 14, Mandoli Jail.

On behalf of the State, there is no opposition to the said submission that the period of incarceration in terms of the impugned order on sentence dated 15.03.2017 has already elapsed.

In view thereof, it is apparent that the appellant has to be released in relation to the FIR No. 650/15, PS Old Delhi Railway Station u/s 395/34 of the Indian Penal Code, 1860 in which the appellant was convicted u/s 394 of the Indian Penal Code, 1860 only and is directed to be released forthwith in relation thereto.

A copy of this order be sent to the Superintendent Jail No. 14, Mandoli Jail.

Learned counsel for the appellant submits that he does not press the appeal on merits anymore.

In view thereof, the appeal is disposed of.

ANU MALHOTRA, J

MARCH 12, 2018/MK