

CRR-2321-2019 (O&M)
Date of decision: 16.01.2020

DINESH @ KALLU

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Rajiv Sharma, Advocate
for the petitioner.

Mr. Sulinder Kumar, AAG, Haryana.

VIVEK PURI, J. (ORAL)

The present revision petition has been filed by the petitioner against the impugned judgment dated 25.07.2019 passed by the learned Additional Sessions Judge, Faridabad (for short 'ASJ'), whereby an appeal preferred by the petitioner was dismissed and the judgment of conviction dated 07.04.2017 as well as order of sentence dated 12.04.2017, passed by learned Judicial Magistrate Ist Class, Faridabad (for short 'JMIC'), upheld.

Heard learned counsel for the parties and perused the paper book.

Briefly the FIR No. 94 dated 13.02.2013 under Section 25 Arms Act at Police Station Saran was registered against the petitioner on the allegations that in pursuance of secret information he was apprehended and six live cartridges . 315 bore were recovered from the right pocket of his pant. The incriminating articles were sealed and taken into possession. On completion of the investigation, the challan was presented in the Court.

The prosecution had examined 6 witnesses and statement of accused under Section 313 Cr.P.C. was recorded, but no defence evidence was led by him.

Learned Judicial Magistrate 1st Class, Faridabad vide judgment dated 07.04.2017 convicted the petitioner and vide order dated 12.04.2017 sentenced him to undergo simple imprisonment for one year and to pay fine of Rs. 2000/- for the commission of offence punishable under Section 25 (1 B) of Arms Act, 1959.

Aggrieved against the judgment dated 07.04.2017, the petitioner had filed an appeal and the same was dismissed by the Learned Additional Sessions Judge, Faridabad vide judgment dated 25.07.2019 thereby affirming the judgment of the learned trial Court, hence the present revision has been filed.

During the course of hearing, it has been fairly conceded by the learned counsel for the petitioner that he does not challenge the findings of conviction and seeks leniency in the matter of sentence and extending the benefit of release of probation of good conduct to the petitioner.

The perusal of the judgment of the Courts below indicate that the fact of recovery of the incriminating articles stand established from the deposition of the witnesses to the recovery. The findings of conviction have been recorded on the basis of satisfactory and reliable evidence produced on record. As such no justified ground is made out to interfere in the findings of the conviction recorded by the Court below.

It has been stated that on the day of registration of the present case, the petitioner was not involved in any other case. It has been stated by the learned State counsel that one more case bearing FIR No. 258 of 2016 under Section 323, 506 read with section 34 IPC has been registered against the petitioner at Police Station Saran, District Faridabad. It may be mentioned here that the said case has been registered subsequent to the registration of the present case. The custody

certificate dated 21.11.2019 has been placed on record which indicates that the petitioner has undergone actual imprisonment of 05 months and 02 days including remission as on 21.11.2019. As such as on today the petitioner has undergone imprisonment for a period exceeding 6 months.

The petitioner is stated to be 24 years of age. Merely because the offence under Section 25 provides of minimum sentence, it cannot be termed to be circumstance to decline the concession of release on probation of good conduct to the petitioner.

In view of the above facts and circumstances, I find sufficient mitigating circumstances to grant the concession of release on probation of good conduct to the petitioner. Accordingly, the sentence imposed upon the petitioner is set aside and he is ordered to be released on probation of good conduct for a period of two years on entering into bonds to the satisfaction of the learned Trial Court/Duty Magistrate with an undertaking that during the period of two years, maintain peace and be of good behaviour. The amount of fine already deposited shall be treated as costs of proceedings. As the petitioner is confined in jail, the requisite bonds may be furnished after moving an application for his production in the Court for the purpose of furnishing bonds.

In view of the above, the present petition stands disposed of.

16.01.2020
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(VIVEK PURI)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No