

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

**CRR-2904-2010 (O&M)
Date of Decision: February 17, 2021
(Heard through Video Conferencing)**

Sonu alias Rajiv

... Petitioner

VERSUS

State of Haryana

.... Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present Mr. Puran Singh Hundal, Senior Advocate with
 Mr. Premjit Singh Hundal, Advocate
 for the petitioner.

Mr. Gurbir Singh Dhillon, AAG, Haryana

JAISHREE THAKUR, J.(Oral)

1. The instant revision petition has been filed by the petitioner seeking to challenge order dated 25.10.2007 passed by the Court of SDJM, Meham as well as judgment dated 21.10.2010 passed in Criminal Appeal No. 30 by which the petitioner has been held guilty for the offences punishable under Sections 354, 452, 506 IPC and had been ordered to undergo R.I. for a period of two years and fine.

2. Learned senior counsel for the petitioner herein assails the said

judgments as being against law and fact. It is argued that the allegations against the petitioner that he entered the house of the complainant and outraged her modesty are patently false as it was alleged that the parents of the complainant/prosecutrix came into the house and tried to catch hold of the petitioner but he escaped. It is argued that it is not believable that the parents of the prosecutrix allowed the petitioner to escape. It is further submitted that no independent witnesses/persons were produced to corroborate the version of the complainant and the said complaint was filed after a delay of six days. It is also argued that there is no medical evidence or any other corroborative evidence available in the shape of tearing of cloths of the petitioner etc. to corroborate the crime. Learned senior counsel, apart from assailing the judgments of both the Courts below, contended that the petitioner ought to have been released on probation as provided under Section 4 of the Probation of Offenders Act, 1958 on the ground that the petitioner was less than 21 years old on the date of the occurrence and he was a first offender. Learned senior counsel also relies upon the judgment rendered by the Apex Court in ***State of Himachal Pradesh vs. Dharam Pal, 2004(9) SCC681***, wherein the accused was directed to be released under Section 4 of the Probation of Offenders Act, 1958 while upholding the conviction order.

3. Section 4 and 6 of the Probation of Offenders Act, 1958 is as under:

4. *Power of court to release certain offenders on probation of good conduct.—*

(1) *When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the*

character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour: Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.

6. Restrictions on imprisonment of offenders under twenty-one years of age.—

(1) When any person under twenty-one years of age is found guilty of having committed an offence punishable with imprisonment (but not with imprisonment for life), the court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it would not be desirable to deal with him under section 3 or section 4, and if the court passes any sentence of imprisonment on the offender, it shall record its reasons for doing so.

(2) For the purpose of satisfying itself whether it would not be desirable to deal under section 3 or section 4 with an offender referred to in sub-section (1) the court shall call for a report from the probation officer and consider the report, if any, and any other information available to it relating to the character and physical and mental condition of the offender.

4. Section 4 of the Probation of Offenders Act, 1958 clearly allows the Court to release the offenders who are not guilty of having committed an offence not punishable for death or imprisonment for life, whereas Section 6 of the said Act imposes a restriction on imprisonment of offenders under the age of 21 years.

5. Mr. Gurbir Singh Dhillon, AAG, Haryana on the other hand submits that the judgments of the Courts below are well reasoned.

6. I have heard learned counsel for the parties and perused the impugned orders. This Court is of the considered view that in the instant case, the petitioner was less than 21 years old on the date of the occurrence and as on date 14 years have passed since his conviction and no other criminal case has been registered against him. Therefore, keeping in mind the age of the petitioner as well as the fact that no other case has been registered against him, this Court deem it appropriate while upholding the conviction order dated 25.10.2007 passed by the Court of Sub Divisional Judicial Magistrate, Meham to allow the petitioner the benefit of being released under Section 4 of the Probation of Offenders Act, 1958.

7. Consequently, this revision petition is partly allowed to the extent that the petitioner's conviction under the aforesaid Sections is upheld, however, the sentence awarded to him is modified to the extent that instead of sentencing him to undergo any sentence, the petitioner is directed to be released on probation of good conduct on executing probation bonds to the satisfaction of concerned trial Court/ Chief Judicial Magistrate. The petitioner is directed to furnish the requisite bonds with an undertaking to keep peace and maintain good behaviour for a period of one year.

8. Other miscellaneous applications, if any, pending on date are disposed of accordingly.

February 17, 2021

(JAISHREE THAKUR)
JUDGE

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Whether speaking/reasoned	Yes
Whether reportable	No