

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

**216**

**CRR-2649-2011 (O&M)  
Decided on : 23.11.2021**

Sushil Kumar @ Billu

. . . Petitioner

Versus

State of Punjab and another

. . . Respondents

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

**PRESENT:** Mr. Ravi Gakhar, Advocate  
for the applicant-petitioner.

Mr. N. K. Banka, DAG, Punjab.

Mr. Monty Goyal, Advocate  
for respondent No. 2.

**(Through Video Conferencing)**

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**VIKAS BAHL, J. (Oral)**

**CRM-32242-2021**

The present application has been filed under Section 482 Cr.P.C. for listing the revision filed by the petitioner for actual date of hearing.

Learning counsel for the applicant-petitioner has submitted that the present case, which has been admitted, may be heard inasmuch as the applicant is not challenging the sentence and conviction and is only praying for leniency in the sentence awarded to the applicant-petitioner.

Learned State counsel and learned counsel for respondent No. 2-complainant have stated that they have no objection in case the application is allowed and the main case is heard today itself.

Keeping in view the abovesaid facts and circumstances, the present application is allowed and the main case is taken up on Board today itself.

### **Main Case**

Challenge in the present criminal revision is to the judgment and order of sentence dated 07.12.2010 passed by the Additional Chief Judicial Magistrate, Rupnagar vide which the petitioner has been convicted under Section 420 IPC and sentenced to undergo rigorous imprisonment for a period of 2 years and 6 months and to pay a fine of Rs.3,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of 2 months.

Challenge is also to the judgment dated 03.10.2011 passed by the Additional Sessions Judge, Adhoc (FTC), Rupnagar vide which the appeal filed by the present petitioner has also been dismissed and the sentence imposed upon the petitioner has been upheld.

The FIR in the present case was registered on the basis of a complaint made by Jaswinder Singh S/o Teja Singh alleging that the petitioner had not sent the complainant abroad after taking money for the same. An enquiry was conducted in the matter by the SP (HQ), Fatehgarh Sahib and as per the said enquiry, it was prima facie found

that the present petitioner had assured Bhajan Singh (uncle of complainant) that he will send Jaswinder Singh abroad and as per Jaswinder Singh, his passport and amount of Rs.50,000/- was handed over to the petitioner and even the remaining amount of Rs.4,00,000/- was also handed over and he alongwith his uncle had gone to Delhi where they kept waiting for a long time but the said petitioner could not send Jaswinder Singh abroad. After the registration of the said FIR, challan was presented and charges were framed under Section 420 IPC against the petitioner who pleaded, not guilty to the charge and claimed trial. The prosecution had examined 7 witnesses, the details of which has been given hereinbelow:-

“Jaswinder Singh as PW-1, Harbhajan Singh as PW-2, Jasmer Singh as PW-3, Tarak Singh as PW-4, HC Gurmit Singh as PW-5, ASI Nirmal Singh as PW-6, Amrik Singh as PW-7.”

PW1-Jaswinder Singh, had deposed with respect to the fact that he had made the payment to the petitioner so that he could be sent abroad but the petitioner could not send him abroad and when the said PW-1 demanded his money back from the petitioner then, an amount of Rs.25,000/- was paid by the petitioner to PW-1 out of the total amount of Rs.5,10,000/-. PW-2 Harbhajan Singh-complainant/uncle of PW-1 deposed that he had introduced the petitioner to PW-1. With respect to the money paid, the prosecution examined PW-3 Jasmer Singh and PW-4 Tarak Singh. All the other witnesses had also supported the case of the prosecution. The learned Additional Chief

Judicial Magistrate, Rupnagar, after considering the entire evidence and documents on record, convicted the petitioner under Section 420 IPC and sentenced the petitioner as mentioned hereinabove. The learned Additional Sessions Judge, Adhoc (FTC), Rupnagar reappreciating the entire matter and after reappreciating the entire evidence, dismissed the appeal of the present petitioner and upheld the judgment of conviction and sentence.

During the course of arguments, learned counsel for the petitioner has submitted that he is not challenging the conviction of the petitioner under Section 420 IPC but is praying for leniency as far as the sentence which has been awarded to the petitioner is concerned and with respect to the same, it has been submitted that the incident in question is of the year 2005 and almost 16 years have gone by and the petitioner has been suffering the agony of trial/appeal/revision for all these years and the petitioner was even granted the concession of bail/suspension of sentence but the petitioner has never misused the said concession. It is further submitted that petitioner is 55 years of age and is the sole bread winner of his family. It is further submitted that the petitioner has already undergone actual sentence of 10 months and 6 days out of which 10 months and 1 day is after conviction and has also earned remission of 3 months and 15 days and thus, the total sentence undergone by the petitioner including remission is 1 year 1 month and 21 days out of total sentence of rigorous imprisonment of 2 years and 6 months.

In support of his arguments, learned counsel for the petitioner has relied upon **CRR-1931 of 2010** decided on 23.07.2019 titled as **Chander Bhan Vs. State of Haryana** wherein the petitioner had actually undergone sentence of 04 months and 07 days in a case registered under Sections 279 and 304-A IPC, a Coordinate Bench of this Court had suspended the sentence by imposing a fine of Rs.25,000/- and the judgment of the Hon'ble Supreme Court in **State of Punjab Vs. Saurabh Bakshi, reported as 2015 (2) RCR (Criminal), 495** was considered. Further reliance has been placed upon a judgment of this Court in **CRR-4830-2016** decided on 08.03.2017 titled as “**Balwinder Singh @ Binder Vs. State of Punjab**” in which case also the sentence was reduced to four months in a case of conviction under Section 279/304-A IPC where rigorous imprisonment was awarded for 02 years. In the said case also, the judgment of the Hon'ble Supreme Court in Saurabh Bakshi's case (*supra*) was considered. Further, reliance has also been placed upon case of **Jaswant Singh Vs. State of Punjab, CRR-1239-2012** decided on 29.08.2019, **reported as 2020 (1) RCR (Criminal) 163**, in which also after taking into consideration the judgment of the Hon'ble Supreme Court in **Saurabh Bakshi's** case (*supra*), the sentence was reduced to already undergone.

Learned counsel for the State of Punjab has submitted that the judgments of both the Courts below are well reasoned and have been passed after taking into consideration the entire evidence and the material on record and has thus, opposed the present Criminal Revision.

However, the fact with respect to the custody of the petitioner as well as having never misused the concession of bail/suspension of sentence has not been disputed by the learned State counsel.

Learned counsel for the complainant has submitted that the complainant has suffered in the present case and some compensation should be awarded to the complainant.

This Court has heard the learned counsel for the parties and has perused the record.

As far as the conviction of the present petitioner under Section 420 IPC is concerned, this Court is of the view that both the Courts have considered the entire evidence and record in detail and have rightly come to the conclusion that the petitioner is liable for the said offence.

PW-1 Jaswinder Singh, who is the complainant, has specifically detailed that he had paid the money to the petitioner for sending him abroad and when he could not be sent abroad by the petitioner then he asked for his money back but the petitioner paid only an amount of Rs.25,000/- out of the total amount of Rs.5,10,000/-. PW-2 Harbhajan Singh, who is the uncle of PW-1, had also proved on record the fact that the petitioner was introduced to the said PW-1 by him. The payment of money has been proved on record by PW-3 and PW-4. The other witnesses also have fully supported the case of the prosecution and nothing has come out from their cross-examination so as to damage the case of the prosecution and thus, the conviction of the

petitioner is upheld.

As far as sentence which has been awarded to the petitioner is concerned, this Court is of the view that keeping in view the fact that the incident in the present case is of the year 2005 and the petitioner has never misused the concession of bail/suspension of sentence and the petitioner is the sole bread winner of his family and has already undergone actual sentence of 10 months and 6 days out of which 10 months and 1 day is after conviction and has also earned remission of 3 months and 15 days and thus, his total sentence undergone including remission is 1 year 1 month and 21 days out of total sentence of rigorous imprisonment of 2 years and 6 months and also in view of the judgments relied upon by learned counsel for the petitioner, it is ordered that the sentence awarded to the petitioner is reduced from 2 years and 6 months to the period already undergone which is stated to be 10 months and 1 day of actual custody and total sentence including remission is 1 year 1 month and 21 days but the fine is however, enhanced from Rs.3,000/- to Rs.53,000/-. The reduction of the sentence to the period already undergone would be subject to the payment of Rs.50,000/- to the complainant-respondent No. 2 within a period of 2 months from the date of receipt of the certified copy of the present judgment.

The petitioner would prepare a draft in the name of the complainant-respondent No. 2 and would hand over the same to the learned counsel for the complainant-respondent No. 2 and counsel for the complainant-respondent No. 2 would further hand over the same to

complainant/respondent no. 2, who would be at liberty to get the same encashed and further, learned counsel for the complainant-respondent No. 2 after receipt of the draft would give a receipt to learned counsel for the petitioner of his having received the draft.

It is, however, made clear that in case the said amount of Rs.50,000/- is not deposited within the stipulated period of two months from the date of receipt of the certified copy of the present judgment, then the present petition would be deemed to have been dismissed.

With these observations, the present criminal revision petition is disposed of in the above said terms.

Pending miscellaneous application, if any, shall also stand disposed of, in view of the abovesaid order.

**(VIKAS BAHL)**  
**JUDGE**

**23<sup>rd</sup> November, 2021**  
*Mehak*

Whether reasoned/speaking?  
Whether reportable?

Yes/No  
Yes/No