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

CRR-427-2020

Date of decision : 16.05.2022

Veerpal Kaur

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Rajesh Bhatheja, Advocate for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

Challenge in the present Criminal Revision Petition is to the judgment dated 15.02.2017, vide which, the Sub Divisional Judicial Magistrate, Nihal Singh Wala, had convicted and sentenced the petitioner under Section 317 of the Indian Penal Code, 1860 (hereinafter to be referred as “the IPC”) to undergo rigorous imprisonment for a period of three years.

Challenge has also been made to the judgment dated 08.01.2020, vide which, the Additional Sessions Judge, Moga had also dismissed the appeal filed by the present petitioner and had upheld the sentence.

Learned counsel for the petitioner has submitted that he is not challenging the conviction of the petitioner but is praying for leniency as far

as the sentence which had 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 2015 and the petitioner has suffered the agony of trial/appeal/revision for all these years and the petitioner was granted the bail/suspension of sentence but she has never misused the said concession. It is further submitted that petitioner is 47 years of age and she has three children, out of which, two are girls who are of marriageable age. It is further submitted that as per the custody certificate dated 11.09.2021, the petitioner has already undergone actual custody of 8 months and 12 days and has also earned remission of 1 month and 15 days and thus, total sentence including remission is 9 months and 27 days and the petitioner is not involved in any other case. It is also contended that the child Lovedeep Singh is also now being taken care of by Kirandeep Kaur and her husband namely Balwant Singh.

In support of his arguments, learned counsel for the petitioner has relied upon **CRR-1931-2010** decided on 23.07.2019 titled as **Chander Bhan Vs. State of Haryana** in which in a case where the petitioner had actually undergone sentence of 04 months and 07 days in a case under Sections 279 and 304-A IPC, this Court has 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**, 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. Further reliance has been placed upon the judgment dated 22.07.2019 passed by the Coordinate Bench of this Court in **CRR-444-2019** titled **Sunil Kumar Vs. State of Haryana**, in which case also, the petitioner therein was convicted under Sections 279, 337, 304-A of the IPC and had undergone about 3 months of judicial custody and was released on probation in the said case.

Learned State Counsel 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. 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 him.

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

As far as conviction of the petitioner under Section 317 of the IPC is concerned, both the Courts below have rightly come to the said conclusion. FIR, in the present case, was registered on the basis of the statement of complainant-Kirandeep Kaur, who has got recorded her statement to the effect that her marriage was solemnized with Balwant

Singh son of Late Joginder Singh 10 years ago and out of their wedlock, they have one son and one daughter and on 16.12.2015, at about 7.30 PM, unknown person had left/abandoned a new born child near the fields of Satpal Singh, adjoining to their house and after hue and cry of the said child, she had rushed to the spot and found many people had gathered there and found that new born child was smeared with blood and was weeping and with the consent of all the persons present at the spot, she picked up the child and took him into her house, for handing over the same to the authorities and on the basis of the said statement, FIR in question was registered and the new born child was handed over to Head of DPO, Moga who had got medically examined the child from Civil Hospital, Moga and the child was sent to Shri Radha Krishna Dham, Faridkot and thereafter, the present petitioner was arrested and the blood samples of the petitioner as well as new born child and Jasvir Singh, husband of the petitioner were obtained and on 05.01.2016, blood samples were sent to Forensic Science Laboratory, Chandigarh. Challan was presented and charges were framed.

The prosecution, in order to prove its case, had examined 7 witnesses, which are as under:-

PW-1	Dr. Sneh Lata	Medical Officer
PW-2	Kirandeep Kaur	Complainant
PW-3	Balwant Singh	Eye Witness
PW-4	SI Gurbux Singh	Investigating Officer
PW-5	Dr. Dalbir Kaur Gaba	Witness
PW-6	Dr. Arwinder Gill	Medical Officer
PW-7	Mohinder Sachdeva	Witness

Although, in the present case, PW2-Kirandeep Kaur and PW3-Balwant Singh did not support the case of the prosecution but when the

petitioner was examined under Section 165 of the Indian Evidence Act, she had stated that child so recovered by the police was forcibly taken by co-accused Sukhpreet Singh from her and thereafter he had left the abandoned child and she further admitted that she has not reported the matter to any authority. The same was held to be an admission of guilt of the accused. Even Forensic DNA report dated 04.01.2016 (Ex.12) shows that both the petitioner and her husband Jasvir Singh cannot be excluded as being the biological parents of the child i.e. Lovedeep whereas, Sukhpreet Singh was found to be excluded as being the biological father of the child Lovedeep.

On the basis of abovesaid evidence as well as evidence of other witnesses i.e. PW1-Dr. Sneh Lata, PW4-SI Gurbux Singh, PW5-Dr. Dalbir Kaur Gaba, PW6-Dr. Arwinder Gill and PW7-Mohinder Sachdeva, both the Courts below have rightly convicted the present petitioner. The said finding is neither shown to be perverse or illegal or against law. In fact, said finding has not been challenged by the learned counsel for the petitioner. Accordingly, conviction of the petitioner under Section 317 of the IPC 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 2015 and the petitioner has never misused the concession of bail/suspension of sentence granted to her and the petitioner is not involved in any other case and is also 47 years of age and has three minor children, out of which, two are girls who are of marriageable age. As per the custody certificate dated 11.09.2021, the petitioner has already undergone actual custody of 8 months and 12 days

and has also earned remission of 1 month and 15 days and thus, total sentence including remission is 9 months and 27 days (and was thereafter granted suspension of sentence vide order dated 13.09.2021 passed by a Coordinate Bench of this Court), and also in view of the judgments relied upon by the learned counsel for the petitioner, it is ordered that the sentence awarded to the petitioner, be reduced to the period already undergone by her.

The same would, however, be subject to the petitioner depositing an amount of Rs.25,000/- before the Chief Judicial Magistrate, Moga, within a period of two months from the date of the present judgment.

The Chief Judicial Magistrate, Moga, is directed to get the said payment of Rs.25,000/- deposited in the Fixed Deposit in the name of minor child after informing him about the same and the same would be given to the minor child-Lovedeep Singh after he attains majority, alongwith interest.

It is made clear that in case, the amount is not deposited within a period of two months from the date of the present judgment, the present Criminal Revision Petition would be deemed to have been dismissed.

Accordingly, the present Criminal Revision petition is disposed of in the abovesaid terms.

16.05.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**