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

CRR-1668-2021 (O&M)

Date of decision : 25.03.2022

Rajesh @ Rinku @ Rakesh Kumar @ Rajesh Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Krishan Kanha, Advocate for
Mr. Narinder S. Lucky, Advocate for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

VIKAS BAHL, J. (ORAL)

CRM-42730-2021

Application is allowed, as prayed for.

Annexures P-1 to P-4 are taken on record, subject to all just exceptions.

Main case

Challenge in the present Criminal Revision is to the impugned order dated 14.09.2021 passed by the Additional Sessions Judge, Fatehabad, whereby the petitioner has not been granted the concession of suspension of sentence in an appeal filed by the petitioner against his conviction under Section 420 of the Indian Penal Code, 1860.

Learned counsel for the petitioner has submitted that the

application of the petitioner for suspension of sentence has been rejected by the Additional Sessions Judge, Fatehabad by observing that the sentence in the present FIR had not started. It is further submitted that the said fact is incorrect inasmuch as the sentence had already started and as on 14.03.2022, the petitioner has undergone 1 year, 1 month and 13 days of custody out of the total sentence of 3 years of rigorous imprisonment.

On the other hand, learned counsel for the State has filed the custody certificate of the petitioner, which is taken on record, as per which, the custody of the petitioner, as on 14.03.2022, is 1 year, 1 month and 13 days with respect to the present FIR. It is also pointed out that the custody after conviction in the present case would start from 04.11.2021 and thus, as on 14.03.2022, the custody of the petitioner after conviction is 4 months and 11 days. It is argued that in the impugned order, the Additional Sessions Judge, Fatehabad has used the expression “sentence” and the said order was passed on 14.09.2021 and on that date, even as per the present custody certificate, the period of custody after conviction had not started. It is, thus, submitted that it cannot be said that there is an infirmity in the impugned order. However, the fact that the petitioner has now undergone 1 year, 1 month and 24 days (1 year, 1 month, 13 days + 11 days) of custody and the custody period after conviction is 4 months and 22 days (4 months, 11 days as on 14.03.2022 + 11 days).

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

From the impugned order, it is apparent that the Court had observed therein that the sentence of the petitioner, in the present FIR, had

not started as on 14.09.2021. It is not in dispute that as on present date, the petitioner has undergone 1 year, 1 month and 24 days (1 year, 1 month, 13 days + 11 days) of custody in the present case and his custody after conviction is 4 months and 22 days (4 months, 11 days as on 14.03.2022 + 11 days).

In view of the said circumstances, the impugned order is set aside and the Additional Sessions Judge, Fatehabad is directed to reconsider the case of the petitioner for suspension of sentence after taking into consideration the latest custody certificate which would be produced by the State before the Additional Sessions Judge, Fatehabad.

The Additional Sessions Judge, Fatehabad is requested to decide the said application as expeditiously as possible preferably within a period of one month from the date of receipt of certified copy of the present order.

The present petition is disposed of accordingly.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid order.

25.03.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No