

2023: PHHC: 157458

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-486-2023(O&M)

Reserved on:04.12.2023

Pronounced on:08.12.2023

KARNAIL KHAN

..... Petitioner

Vs.

State of Punjab and others

..... Respondents

CORAM: HON’BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Amardeep Tiwana, Advocate, for the petitioner.

Mr.M.S. Nagra, AAG, Punjab.

None for respondent Nos.2 to 5.

DEEPAK GUPTA, J.

Respondents No.2 to 5 faced trial in the Court of Id. JMIC, Patiala in a case arising out of FIR No.44 dated 19.05.2013 registered at Police Station Bakshiwala, Patiala, under Sections 307, 452, 323, 324, 506, 148 & 149 IPC.

2. Vide judgment dated 30.11.2017, they were convicted under Sections 323, 324, 452 & 506 read with Section 34 IPC and vide a separate order of the even date, all of them were sentenced as under: -

Name of Convicts	Office U/s	Sentence awarded	Fine imposed
Gurpal Singh @ Pali, Binder Singh, Tek Singh and Chamkaur Singh	323 r/w Section 34 IPC	Rigorous imprisonment for six months	
	324 r/w Section 34 IPC	Rigorous imprisonment for one year	
	452 r/w Section 34 IPC	Rigorous imprisonment for one year	Rs.500/- each in default of payment of fine- simple imprisonment for ten days
	506 r/w Section 34 IPC	Rigorous imprisonment for six montsh	

3. Respondents No.2 to 5, against the aforesaid conviction and sentence, preferred appeal. The Court of Id. Additional Sessions Judge, Patiala vide its judgment dated 17.12.2022 upheld the conviction, but considering the nature of offences, respondents No.2 to 5 (Appellants before appellate Court), were directed to be released on probation of good conduct for a period of one year on furnishing probation bonds in the sum of ₹20,000/- each with one surety of the like amount.

4. Present revision has been filed by the complainant of the case, who is aggrieved by the order dated 17.12.2022 of Id. Additional Sessions Judge, Patiala, releasing the respondents No.2 to 5 on probation.

5. It is contended by Ld. Counsel for the petitioner – complainant that the reasoning given by the appellate Court for extending the benefit of probation, is totally unsustainable. Ld. appellate Court failed to consider that private respondents attacked the revisionist - petitioner by entering his house and had beaten his wife Fatima. Still further, it is submitted that all the respondents were already previous convicts in other cases and being habitual offenders, the said factor should have been considered by the appellate Court while deciding the quantum of sentence. Petitioner has given details of the previous convictions of all the four respondents and contends that provisions of Section 4 of the Probation of Offenders Act, 1958 [for short ‘the Act’], have not been complied with. With these submissions, prayer is made to set aside the order of the appellate Court dated 17.12.2022 qua the quantum of sentence with the further prayer to actually sentence respondents No.2 to 5.

6. Upon notice, respondents No.2 to 5 initially made appearance through their counsel, but later on there was no representation on their behalf.

7. In the status report filed on behalf of respondent No.1/State, the previous conviction of respondents No.2 to 5 has been conceded to and necessary

details in this regard have been given, which would reveal the criminal antecedents of respondent No.2 to 5 as under:

Respondent No.2-Gurpal Singh @ Palli		
Sr. No.	FIR Particulars	Status
1	FIR No:463 dated 25.12.2010 u/s 452, 323, 324, 354, 427, 148, 149 of IPC registered at PS Tripuri, Patiala.	Convicted and released on probation
2.	FIR No. 14 dated 12.02.2010 u/s 459, 324, 323, 427, 34 of IPC registered at PS Sadar Nabha, Patiala	Wanted by Police.
3.	FIR No.54 dated 20.10.2011 U/s 323, 324, 148, 149 of IPC registered at PS Sanaur, Patiala	Compromised and cancelled.
4.	FIR No.54 dated 16.07.2012 u/s 379, 447, 341, 323, 427, 148, 149 of IPC registered at PS Bakshiwal, Patiala	Convicted and released on probation
5.	FIR No.96 daed 30.12.2012 u/s 447, 427, 511 of IPC registered.	Acquitted
6.	FIR No.44 dated 19.05.2013 u/s 307, 452, 323, 506, 148, 149 of IPC registered at PS Bakshiwal, Patiala	Convicted and released on probation
7.	FIR No.74 dated 10.08.2018 u/s 323, 341, 506, 379, 34 of IPC registered at Bakshiwal, Patiala	Cancelled
8.	FIR No.16 dated 08.03.2021 u/s 323, 324, 341, 427, 447, 511, 506, 148, 149 of IPC registered at PS Bakshiwal, Patiala	Pending for 06.05.2023 before the Court of Ms. Ruchi Swapan Sharma, JMJC, Patiala.
9.	FIR No.46 dated 31.07.2022 u/s 406, 420 of IPC registered at PS Bakshiwal, Patiala	Pending (Challan not filed yet).

Respondent No.3-Chamkaur Singh @ Chamkaur Singh		
Sr. No.	FIR Particulars	Status
1.	FIR No.44 dated 19.05.2013 u/s 307, 452, 323, 506, 148, 149 of IPC registered at PS Bakshiwal, Patiala	Convicted and released on probation

Respondent No.4-Bhinder Singh @ Binder Singh @ Harwinder Singh		
Sr. No.	FIR Particulars	Status
1.	FIR No.54 dated 16.07.2012 u/s 379, 447, 341, 323, 427, 147, 149 IPC registered at PS Bakshiwal, Patiala	Convicted and released on probation.
2.	FIR No.96 dated 30.12.2012 u/s 447, 427, 511 of IPC registered at PS Bakshiwal, Patiala.	Acquitted
3.	FIR No.44 dated 19.05.2013 u/s 307, 452, 323, 506, 148, 149 of IPC registered at PS Bakshiwal, Patiala.	Convicted and released on probation
4.	FIR No.74 dated 10.08.2018 u/s 323, 341, 506,	Compromised and cancelled.

	<i>379, 34 of IPC registered at PS Bakshiwala, Patiala.</i>	
5.	<i>FIR No.16 dated 08.03.2021 u/s 323, 324, 341, 427, 447, 511, 506, 148, 149 of IPC registered at PS Bakshiwala, Patiala.</i>	<i>Pending for 06.05.2023 before the Court of Ms/Ruchi Swapan Sharma JMIC Patiala.</i>

Respondent No.5-Tek Singh		
Sr. No.	FIR Particulars	Status
1.	<i>FIR No.54 dated 16.07.2012 u/s 379, 447, 341, 323, 427, 147, 149 IPC registered at PS Bakshiwala, Patiala</i>	<i>Convicted and released on probation.</i>
2.	<i>FIR No.96 dated 30.12.2012 u/s 447, 427, 511 of IPC registered at PS Bakshiwala, Patiala.</i>	<i>Acquitted</i>
3.	<i>FIR No.44 dated 19.05.2013 u/s 307, 452, 323, 506, 148, 149 of IPC registered at PS Bakshiwala, Patiala.</i>	<i>Convicted and released on probation</i>

Though respondent No.1 has given details of the previous convictions of the respondents N: 2 to 5 as above, but there is neither any prayer to dismiss the petition nor to allow the same.

8. I have considered submissions of both the sides and have appraised the record carefully.

9. Section 4 of the Act reads 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.

10. In ***M.C.D. Vs. State of Delhi, 2005(4) SCC 605***, it has been held by Hon'ble Supreme Court that considering the report of the Probation Officer is a condition precedent to the release of accused on probation. A release without such a report would be illegal. Hon'ble Supreme Court clarified that though the Court is not bound by such a report, but it must call for it before the case comes to its conclusion. In ***Kamroonissa Vs. The State of Maharashtra, 1975 (3) SCC 272***, it has been held by Hon'ble Supreme Court that for the purpose of satisfying itself as to whether it would be desirable to proceed under Section 3 or Section 4 of the Act,

the Court shall call for a report from the Probation Officer and consider it. In the case of *Sushil Kumar Vs. State of Haryana and others, 2018(4) RCR (Criminal) 868*, this Court by referring to the case of *M.C.D. Vs. State of Delhi (Supra)* has held that it is mandatory for the Court to call for the report of the Probation Officer as per Section 4 and to consider the same though the Court is not bound by the said report.

11. In the present case, perusal of the impugned order dated 17.12.2022 passed by Id. Additional Sessions Judge, Patiala would reveal that while ordering for release of respondent N: 2 to 5 on probation, neither any notice was given to the Probation Officer so as to submit his report nor any opportunity was given to the State so as to place on record the details of the criminal antecedents of respondents No.2 to 5.

12. In the aforesaid facts and circumstances and considering the legal position as explained earlier, the impugned order dated 17.12.2022, whereby respondent No.2 to 5 have been directed to be released on probation, cannot be sustainable in the eyes of law. The said order is hereby set aside. The case is remanded back to the Court of concerned Id. Additional Sessions Judge, Patiala with a direction to call for the report of the Probation Officer and also provide opportunity to the respondent/State to furnish details regarding the criminal antecedents of respondents No.2 to 5 and then to pass necessary order qua the sentence of respondents No.2 to 5, in accordance with law.

Disposed of.

Pending application(s), if any, shall stand disposed of.

08.12.2023

Vivek

**(DEEPAK GUPTA)
JUDGE**

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
No