

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

Criminal Revision No. 283 of 2010 (O&M)

Reserved On: 04.12.2023

Pronounced On: 20.12.2023

Baldev @ Baldev Raj

..... Petitioner

Versus

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. R.S. Chahal, Advocate
for the petitioner.

Mr. Gurmeet Singh, Assistant Advocate General, Haryana

HARKESH MANUJA, J.

By way of present revision petition, challenge has been made to the judgment of conviction and order of sentence dated 04.08.2009 and 06.08.2009 passed by the Chief Judicial Magistrate, Sirsa, in Case No.349/2002/2004, arising out of case FIR No. 182 dated 21.11.2001 under Sections 61/1/14 of Excise Act, vide which the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month, as well as judgment dated 25.01.2010 passed by the Court of Additional Sessions Judge (FTC), Sirsa, whereby, the judgment of Trial Court has been affirmed.

[2] Brief facts of the case are that on 21.11.2001, a police party was present at G.T.Road, Village Moriwala in connection with excise

checking. A scooter was seen coming from the side of Ding turning and when it was signaled to stop, driver of the scooter on seeing the police party became perturbed and fled away towards the fields, leaving behind the scooter at the spot. From the checking of the scooter, two bags containing pouches of country made liquor were recovered. Two pouches from each bag as sample were separated and the remaining pouches on counting were found to be 296. The sample pouches and the remaining pouches were sealed with seal 'RK' and taken into police possession vide separate recovery memos alongwith scooter bearing Regn. No. HRN-9584. The seal after use was handed over to Head Constable Rajender Singh. Since the accused by keeping in his possession 300 pouches of country made liquor had committed an offence under the provisions of Excise Act, therefore, ruqa was sent to police station Ding and FIR No.182 dated 21.11.2001 under Section 61(1)(A) of Excise Act was registered at Police Station Ding.

[3] The Trial Court vide its judgment dated 04.08.2009 held the petitioner guilty and vide order dated 06.08.2009 sentenced him to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.1000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month. Appeal filed against the aforementioned judgment before learned Additional Sessions Judge (FTC), Sirsa was dismissed vide judgment dated 25.1.2010. That is how the present criminal revision petition came to be filed.

[4] Learned counsel for the petitioner, rather than pressing the petition on merit, submits that petitioner is not a habitual offender which

can be ascertained from the fact that despite passage of more than 20 years, he has not been involved in any other case of criminal nature and thus, prays for grant of benefit of probation. He further submits that though as per the custody certificate dated 03.12.2013, there is another FIR No. 468 of 2022, dated 11.06.2022 under Sections 323 / 506 / 212 / 201 / 34 IPC and Sections 25/54/59 of Arms Act, in which he is on bail. Learned counsel places reliance upon "**Surat Ram vs. State of Punjab**", reported in **2006(1) CLR 156**, to contend that petitioner is also entitled to be released on probation as he has been out on the bail/suspension of sentence from last more than 20 years and not even on a single instance, he has misused the same. He further submits that petitioner has already undergone 15 days of actual sentence out of total sentence of three (03) months.

[5] On the other hand, learned State counsel has opposed the prayer made on behalf of petitioner, though he does not deny the factual averments that petitioner has not been convicted in any other case and he has also not misused the bail granted to him in past.

[6] I have heard learned counsel for the parties and gone through the paper book of the case. In my considered opinion, it is a fit case to release the petitioner on probation as there is no counter to the factual position that:-

- (i) petitioner has not been convicted in any other case and is not habitual offender;
- ii) petitioner has been out on bail/suspension of sentence for the last more than 22 years

without any misuse of the same; and

- (iii) petitioner has already undergone 15 days of actual sentence out of a total sentence of three (03) months.

[7] Therefore, petitioner satisfies the condition specified under Section 360 of Cr.P.C. for the purpose of releasing a convict (with reference to a male person above 21 years of age) on probation, as the offence in the present case under Section 61(1)(a) of Punjab Excise Act, is punishable with imprisonment upto three years alongwith fine and no previous conviction is proved against him as well. Petitioner's case also requires specific consideration as he has only been sentenced for a period of 3 months. At the same time, all the factual aspects taken into consideration in *Surat Ram's case (supra)* are also applicable in the present case as well.

[8] Further, in view of the mandate of Section 361 Cr.P.C. as well as the various decisions of this Court, assigning special reasons by the Court is mandatory while not granting the benefit of the probation in case of first offender, however, no such step was taken in this direction by Trial Court or Sessions Court.

[9] Accordingly, petitioner is granted the benefit of probation under the provisions of Probation of Offenders Act and is ordered to be released on probation under Section 4 (1) of the said Act, subject to furnishing probation bonds in the sum of Rs. 5,000/- with one surety in the like amount to the satisfaction of the Trial Court for a period of three (03) months, with an undertaking to appear and receive the sentence as

and when called upon during the period of three (03) months, and in the meantime to keep peace and be of good behavior.

[10] Revision petition is **disposed off** accordingly.

[11] Pending miscellaneous application(s), if any, shall also stand disposed off.

December 20, 2023
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>