

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

332

CRR-1816-2011 (O&M)
Date of decision: 05.09.2023

Subhash Chander

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Nishant Raj Ghanghas, Advocate for the petitioner

Mr. H.S. Sullar, Sr. DAG Punjab

AMAN CHAUDHARY. J.

1. Challenge in the instant revision petition is to the judgment dated 03.08.2011 passed by the Additional Sessions Judge (Adhoc), Fast Track Court, Gurdaspur, whereby the appeal preferred by the petitioner against the judgment dated 03.02.2010 rendered by Sub Divisional Judicial Magistrate, Pathankot, convicting and sentencing him for the offence under Sections 279 and 304-A IPC of IPC has been dismissed.

2. Summarily, an FIR was registered under Sections 279, 304-A and 427 IPC, on account of an accident that took place on 02.02.2005 between a Haryana Roadways bus, being driven by the accused-petitioner, and a bicycle. After investigation, challan was prepared and presented in the Court. Upon which charges were framed against the accused-petitioner to which he pleaded not guilty and claimed trial.

3. As many as 6 witnesses were examined by the prosecution, in order

to prove its case. Thereafter, the statement of the accused-petitioner was recorded under Section 313 CrPC whereby incriminating evidence was put to him, which he denied and pleaded false implication. He did not lead any evidence in his defence.

4. The trial Court came to the conclusion that prosecution has proved its case, and accordingly convicted the petitioner-accused for an offence under Sections 279 and 304A, IPC and sentenced him to undergo rigorous imprisonment for a period of 1 year and pay a fine of Rs.500/- concurrently.

5. Aggrieved accused-petitioner, approached the Additional Sessions Judge (Ad Hoc), Fast Track Court, Gurdaspur, whereby his appeal was dismissed vide impugned judgment dated 03.08.2011.

6. Hence, the present revision petition.

7. Learned counsel at the outset submits that the petitioner does not wish to press the present petition on merits and prays for extending the benefit of probation under The Probation of Offenders Act, 1958, in view of the mitigating circumstances being that, the incident pertains to the year 2005; the petitioner is a government employee at the end of his service; has already undergone 3 months and 12 days out of the sentence awarded; never misused the concession of bail; first time offender, sole breadwinner, has a family to support, including his wife, who underwent cancer surgery and his 80 year old mother.

8. On the other hand, learned State counsel opposes the prayer made, and submits that the Courts below have rightly convicted the accused-petitioner on the evidence produced by the prosecution. He is however, unable to controvert the factum of petitioner never having misused the concession of bail. Therefore, prays that the present revision petition be dismissed.

9. Heard and perused.
10. Complainant-Ajit Ram-PW-4, who was the star witness, had categorically stated that when he, Pritam Chand, PW-5 and the deceased, were going to their village in their bicycles, the bus bearing No. HR.67-2332 being driven in a rash and negligent manner by the petitioner struck the cycle of the deceased. The above fact stood corroborated by the medical evidence and also the statements of PW-5, an eye-witness to the incident. Thus, the Courts below have properly examined the evidence and rightly convicted the petitioner.
11. As regards the prayer made on behalf of the petitioner is concerned, it would be apposite to make a reference to Section 4 of the Probation of Offenders Act, 1958, which reads thus:

“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.”

12. It would be worthwhile to refer to the judgment of **Ratan Lal vs. State of Punjab** AIR 1965 SC 444, whereby Hon’ble The Supreme Court, regarding the purpose and object of ‘The Probation of Offenders Act, 1958’ had observed and held that, “The Act is a milestone in the progress of the modern liberal trend of reform in the field of penology. It is the result of the recognition of the doctrine that the object of criminal law is more to reform the individual offender than to punish him. Broadly stated the Act distinguishes offenders below 21 years of age and those above that age, and offenders who are guilty of having committed an offence punishable with death or imprisonment for life and those

who are guilty of a lesser offence. While in the case of offenders who are above the age of 21 years, absolute discretion is given to the court to release them after admonition or on probation of good conduct, subject to the condition laid down in the appropriate provision of the Act, in the case of offenders below the age of 21 years an injunction is issued to the court not to sentence them to imprisonment unless it is satisfied that having regard to the circumstances of the case, including the nature of the offence and the character of the offenders, it is not desirable to deal with them under Ss. 3 and 4 of the Act.”

13. Hon’ble The Supreme Court in **Sitaram Paswan and Anr. vs. State of Bihar**, AIR 2005 SC 3534, observed that benefit of probation can be extended at the appellate or revisional stage as well, and held that, “For exercising the power which is discretionary, the Court has to consider circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the Court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the Court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act having regard to the nature of the offence and the character of the offender and overall circumstances of the case. The powers under Section 4 of the Probation of Offenders Act vest with the Court when any person is found guilty of the offence committed, not punishable with death or imprisonment for life. This power can be exercised by the Courts while finding the person guilty and if the Court thinks that

having regard to the circumstances of the case, including the nature of the offence and the character of the offender, benefit should be extended to the accused, the power can be exercised by the Court even at the appellate or revisional stage and also by this Court while hearing appeal under Article 136 of the Constitution of India.”

14. It would also be gainful to make a reference to the judgments in **Aitha Chander Rao vs. State of A.P.**, 1981 (Supp) SCC 17, **A.P. Raju vs. State of Orissa**, 1995 Supp (2) SCC 385 and **Om Prakash vs. State of Haryana**, (2001) 10 SCC 477, and **State of Karnataka vs. Muddappa** 1999 SCC (Cri) 1046, wherein Hon’ble The Supreme Court extended the humanizing principle to a conviction where *mens rea* remains absent as in a case of rash and negligent driving under Section 279 read with Section 304-A IPC and convict is first-time offender, who has faced protracted trial, no purpose would be served to suffer the sentence imposed.

15. This Court in **Bishan Singh vs. State of Punjab**, CRR-1283-2008, decided on 27.01.2023, had released the petitioner on probation by observing the fact that after having faced criminal proceedings for more than 23 years, no useful purpose would be served by sending him back to jail, more so, when he was not involved in any other criminal case.

16. In **Paul George vs State of N.C.T. of Delhi** 2008 (4) SCC 185, the appellant, who was Head Constable Driver, had come-face on the incoming traffic, which was the factor that caused the accident, Hon’ble The Supreme Court though found that it was clearly not a matter within the colour of duty, thus he was not be covered by Section 140 of Delhi Police Act, however, observed that ends of

justice would be met, if he is directed to be released on probation, he having faced and fought the litigation tenaciously that lasted for 20 years and throughout had good service career, but for this one aberration.

17. This Court also in the case of **Ajaib Singh vs. State of Punjab and another**, CRR-2851-2009, decided on 03.03.2022, wherein the petitioner had been convicted under Sections 304A and 279 and 427 IPC, granted probation as he had undergone a sentence of 3 months and 6 days out of 2 years of the sentence and faced the protracted trial for approximately 9 years.

18. In the case of **Paramjit Singh vs. State of Haryana** 2011(2) RCR (Crl.) 855, this Court allowed probation to the appellant, who was a Haryana Govt. servant, remained in custody for 11 days, suffered agony of protracted trial for more than 16 years, was not a previous convict, had not misused the concession of bail, had 5 children, wife and old aged parents to support, with an observation that his service shall not be affected in terms of Section 12 of the Probation of Offenders Act. Likewise, in CRR-444-2019, titled as **Sunil Kumar vs. State of Haryana**, decided on 22.07.2019, this Court ordered the release of the petitioner on probation of good conduct, in view of the mitigating circumstances, he being not a previous convict had shown substantive improvement in his character after 7 years had passed by, was sole bread earner and a driver in Haryana Roadways, while observing that his probation may not affect his career in terms of Section 12 of the Probation of Offenders Act. In the case of **Umed Singh and Others vs. Azad Singh and another**, CRR-2734-2015 decided on 04.04.2019 also the conviction of the petitioner was upheld and the sentence was modified and the petitioners were directed to be released on probation of 2 years. The accused was

held entitled to benefit of probation which may not have an effect on his career in terms of Section 12 of the Probation of Offenders Act.

19. This Court in the case of **Amardeep Singh vs. State of Punjab**, CRR-146-2014, decided on 30.05.2014, had released the petitioner, who was convicted under Sections 337 and 304A IPC on probation by observing that he was a government employee, at the fag end of his service, and otherwise had faced the prolonged trial for almost 9 years. Similarly, in CRR-3241-2012, **Major Jai Rajan vs. State of Punjab**, decided on 31.01.2013, the petitioner, a Major in the Army at the time of incident was ordered to be released on probation on the ground of having an unblemished service of 34 years in the Army and was due for promotion as a Colonel, and had undergone 3 months out of the sentence awarded and compensated the LR's of the deceased in MACT.

20. Reverting to the facts of the present case as regards the prayer made on behalf of the petitioner is concerned, this Court considering the mitigating circumstances and the judgments referred to above, finds that the ends of justice would be adequately met if the petitioner is granted the benefit of probation of good conduct.

21. As a consequence to the above, present revision petition is hereby disposed of with a direction to grant probation to the petitioner for a period of one year, on the following conditions as enshrined under Section of the Probation of Offenders Act, 1958:

- (1) He shall execute a bond for good behaviour with two solvent sureties in a sum of Rs.25,000/- which shall be executed before the trial Court within a period of one month

from today.

(2) The said bond shall be in force for a period of one year.

(3) He shall be subject to the supervision of the Probation Officer and subject to the conditions laid down in the Probation of Offenders Act.

22. It is clarified that in case there is any breach of the aforesaid conditions, the petitioner will forthwith be taken into custody and shall have to undergo the sentence awarded to him by the trial Court.

(AMAN CHAUDHARY)
JUDGE

September 05, 2023
M.Kamra

Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No