

234 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-19288-2019 in/and
CRR-1484-2019 (O&M)
Date of decision: 08.11.2023

MUKESH KUMAR

...Petitioner

V/s

THE STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Shivam Grover, Advocate
for the applicant/petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

None for respondent No. 2.

HARPREET SINGH BRAR J. (ORAL)

1. On 26.08.2022, following order was passed:

“Learned State counsel submits that the petitioner was granted interim bail and he was to surrender on 21.01.2020. However, he has not surrendered till date.

Perusal of the record would show that vide order dated 16.10.2019 passed by a Coordinate Bench of this Court, the petitioner was granted interim bail, which was further extended from time to time. It was also noticed in the said order that the petitioner had already undergone custody period of one month and fifteen days.

Thereafter, on 17.12.2019, the Coordinate Bench had noticed the contention of the learned counsel for the applicant-petitioner to reduce the sentence already undergone by him, in view of the extent of the disability suffered by the injured.

In view of the above, let the applicant-petitioner be heard on the quantum of sentence.

Adjourned to 21.09.2022.

Interim order to continue.

To be taken up immediately after the urgent list.”

2. In view of the above order, learned counsel for the petitioner makes his submission on the quantum of sentence and submits that petitioner is a first time offender who is 59 years of age. The disability suffered by the injured victim in the alleged accident is to the extent of 7% only and the petitioner is facing the FIR since the year 2012. He has already paid the amount of Rs. 10,000/- as was directed by learned trial Court to be paid to the injured, vide receipt No. 504494 dated 25.11.2019.

3. In view of the prayer made by learned counsel for the petitioner, the main case is also taken on board today itself.

4. Learned State counsel has supplied the custody certificate and he contends that the petitioner was granted interim bail by this Court on 16.10.2019 and he was supposed to surrender on 21.01.2020 but he has not surrendered thereafter. He further submits that the petitioner has undergone 04 months and 24 days out of total 01 year of imprisonment awarded to the petitioner.

5. I have heard the learned counsel for the parties and gone through the case file.

6. A two Judge Bench of the Hon'ble Supreme Court in State of Haryana Vs. Janak Singh AIR 2013 SC 3246 has dealt with the power of this Court to reduce the sentence as to the one already undergone in cases where the accused is convicted for an offence for which a minimum

sentence is prescribed by law. Speaking through Justice Ranjana Prakash Desai, the Hon'ble Supreme Court has observed as under:-

“10.....It was open for the respondents to press the appeals on merits and pray for acquittal. Had the case been argued on merits, the High Court could have acquitted the respondents if it felt that the prosecution had not proved its case beyond reasonable doubt. Assuming the respondents did not press the appeals, the High Court had to still consider whether the concession made by the counsel was proper because it is the duty of the court to see whether conviction is legal. But, once the respondents stated that they did not want to press the appeals and the High Court was convinced that conviction must follow, then, ordinarily it could not have reduced the sentence to the sentence already undergone by the respondents which is below the minimum prescribed by law. The High Court could have done so only if it felt that there were extenuating circumstances by giving reasons therefor. While reducing the sentence, the High Court has merely stated that it was “just and expedient” to do so. These are not the reasons contemplated by the proviso to Section 376(1) of the Indian Penal Code. Reasons must contain extenuating circumstances which prompted the High Court to reduce the sentence below the prescribed minimum. Sentence bargaining is impermissible in a serious offence like rape. Besides, at the cost of repetition, it must be stated that such a course would be against the mandate of Section 376(1) of the IPC.”

7. A two Judge Bench of the Hon'ble Supreme Court in Ajmer Singh Vs. State of Punjab (2005) 6 SCC 633 has observed as under:-

“10. We have noticed in several judgments of the High Courts which have come up for consideration before us that while reducing the sentence to the period already undergone, no notice is taken of the actual sentence undergone by the accused. There is nothing on record to indicate the period of sentence already undergone by the accused. We, therefore, consider it appropriate to observe that whenever a court reduces the sentence of an accused to the period already undergone, it should categorically notice and state the period actually undergone by the accused.”

A two Judge Bench of the Hon’ble Supreme Court in Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926, speaking through Justice V.R. Krishna Iyer, has observed as under:-

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to antisocial behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology is in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

8. In *Deo Narain Mandal v. State of UP* (2004) 7 SCC 257, a three Judge bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench in *Ravada Sasikala v. State of AP* AIR 2017 SC 1166, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

9. A perusal of the ratio decidendi culled out in the above-mentioned judgments of the Hon'ble Supreme Court indicates that in order to determine the quantum of sentence, Courts should bear in mind the principle of proportionality as awarding punishment is not merely retributive but also reformative.

10. As per the custody certificate produced by the learned State counsel, out of the total sentence of 01 year, the petitioner has undergone actual sentence of 04 months and 24 days and the petitioner has also paid the amount of Rs. 10,000/- as was directed by learned trial Court to be paid to the injured.

11. A perusal of the judgment of conviction passed by the trial court indicates no perversity in the findings of the trial court and the same are based on correct appreciation of evidence available on record. Counsel for the petitioner has not assailed the judgment of conviction on merits rather he has restricted his prayer only qua quantum of sentence.

12. The interlocutory order passed by this Court would indicate that the interim bail granted to the petitioner on 16.10.2019 was extended from time to time. Lastly it was extended on 05.05.2023 till the adjourned date. The petitioner was convicted vide judgment of conviction and order of sentence dated 01.09.2017 and 04.09.2017 respectively and he was awarded the sentence of rigorous imprisonment for a period of 01 year. The appeal filed by the petitioner was also dismissed by the First Appellate Court on 01.06.2019. Thereafter the petitioner has approached this Court and filed the present revision petition by assailing the aforementioned order.

13. Consequently, the present revision petition is disposed of in the following terms:-

- (i) The judgment and order on quantum of sentence dated 01.09.2017/04.09.2017 passed by the Judicial Magistrate Ist Class, Sub Division, Bilaspur and upheld by learned Sessions Judge, Yamuna Nagar at Jagadhri vide judgment dated

01.06.2019, convicting the petitioner is reduced to the period of sentence already undergone by them.

- 14. Keeping in view the facts and circumstances of the case, the revision petition is partially allowed.
- 15. Bail bonds and surety bonds of the petitioner stand discharged.
- 16. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

08.11.2023

Ajay Goswami

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