

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

CRR-3611-2017 (O&M)

Reserved on : 21.04.2023

Pronounced on: 02.05.2023

State Chandigarh Administration, Chandigarh Petitioner

Versus

Naveen Kumar and another Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Mohit Rana, Advocate for
Mr. Charanjit Singh Bakhashi, APP, UT, Chandigarh.
None for respondents No.1 and 2.

Rajesh Bhardwaj, J.

CRM-31767-2017

This is an application for condonation of delay of 29 days in filing the present petition.

It has been submitted by learned counsel for the applicant that delay in filing the petition was not intentional and it was on account of the fact that after the receipt of the copy of the judgment, legal opinion was taken and thereafter the concurrence was granted by the concerned authorities. He submits that in all processing, the delay of 29 days occurred and the same may kindly be condoned.

After hearing learned counsel for the applicant, the application is allowed and delay of 29 days in filing the present petition is condoned.

Main case

State of UT Chandigarh has filed by the present petition impugning the order dated 22.05.2017 passed by the learned Additional Sessions Judge, Chandigarh, whereby, judgment dated 16.08.2016 passed

by learned trial Court was affirmed and the respondent-convicts were ordered to be released on probation on their executing probation bonds in the sum of Rs.50,000/- each for a period of one year.

Succinctly, facts of the case are that a complaint was lodged by SI Sukhdev Singh with the Police on 11.08.2011. It was alleged therein that he was deputed by his senior officer for conducting the medical examination of newly recruited constables in Police Department. Medical examination of one candidate, namely, Parveen son of Ramesh Kumar was got conducted by the medical board and he was declared unfit due to his weak eye sight by the concerned medical board. Thereafter, the said candidate made a request to Home Secretary, Chandigarh Administration and it was ordered by the Home Secretary to DHS, UT, Chandigarh for conducting his medical re-examination. Accordingly, a board of two doctors of GMCH Sector-32 & one Doctor of GMSH Sector-16 was constituted and the said board after examining the candidate declared him fit. Thereafter, the medical of Parveen Kumar alongwith other documents was sent to medical Superintendent for putting his final signature on the medical report, who showed suspicion on the medical report of the candidate on the ground that his eye sight was found as 6/60 as mentioned in Q/10 by the medical board. This candidate was again called on 11.08.2016 by the Medical Branch, Sector-16, Chandigarh to verify the abovesaid facts. It was alleged that the complainant was present in the hospital for conducting medical test of two newly selected candidates and there he met Naveen Kumar, who was the brother of Parveen Kumar. On asking, he told the complainant that he had come to the hospital for medical examination in place of his brother Parveen Kumar. On the basis of these allegations, the FIR was registered

and the investigation carried out. The prosecution examined in all 8 witnesses besides the documentary evidence. The learned trial Court after a detailed trial found the prosecution having proved its case beyond reasonable doubt and convicted both the respondent-convicts for the offence under Section 419 read with Section 120-B IPC and Section 420 read with Section 120-B IPC and Section 511 IPC for a period of two years of rigorous imprisonment. Aggrieved by the same, the respondent-convicts filed an appeal before the learned Appellate Court. During arguments both the appellants did not challenge the judgment of conviction dated 16.08.2016 and prayed for a lenient view in their favour by granting them benefit of probation. They prayed that both the appellants are brothers and are unemployed and sending them behind bars would destroy their future. The learned Appellate Court keeping in view the overall facts and circumstances, upheld the conviction and sentence as awarded by the learned trial Court, however, in the facts and circumstance released both the respondent-accused on probation on their executing probation bonds in the sum of Rs.50,000/- each for a period of one year alongwith one surety in the like amount. Besides this, the learned Appellate Court extended the benefit of Section 12 of Probation Offenders Act to the appellants vide order dated 22.05.2017 holding that probation would not affect their career in future. The State of UT, Chandigarh has approached this Court by way of filing the present revision petition impugning the order dated 22.05.2017 releasing the respondent-convicts on probation.

It has been contended by learned counsel for the petitioner that there were serious allegations against both the respondents. He submits that respondent-convicts are brothers and they were convicted for cheating and

committing fraud with the State by way of impersonation. It is submitted that the prosecution produced un-impeachable evidence and duly proved the charges framed against both the respondents. It is submitted that as the respondents have committed serious crime, they are not entitled to be released on probation and hence, the impugned judgment dated 22.05.2017 deserves to be modified by sentencing the respondents for the offences committed by them.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that the respondents were tried by the learned trial Court for the offences under Sections 419, 420, 120-B IPC and were convicted and sentenced. Both of them assailed the same by way of appeal before the learned Appellate Court and fairly submitted before the learned Appellate Court that they do not assail the conviction and sentence as held by the trial Court. It was prayed before the learned Appellate Court that the respondents belonged to poor family and both are unemployed. It was submitted that both of them are at the threshold of their life and thus, their future is totally at stake. It was prayed that they be released on probation on the condition of their filing reasonable bonds.

Admittedly, conviction and sentence was not pressed on merits by both the respondent-accused. However, the Appellate Court could not turn blind eye to the future of both the convicts, who fairly submitted before the learned Appellate Court regarding taking a lenient view. Vide order dated 22.05.2017, both the respondents were released on probation for one year and there is nothing on record to show that during the said period, they had violated any term or condition of probation granted to them

necessitating this Court to recall the order and sending them behind the bars. As per law settled, the Court being sentinel to the justice, would not ignore the fact that the convicts deserve to be given opportunity for reforming them. Sending the respondents behind bars at this time in the company of hardcore criminals, would be counter productive and the efforts of the State to bring the convicts back to the mainstream of the society, would be seriously prejudiced.

Hon'ble Supreme Court in case of **Lakhanlal @ Lakhan Singh vs. State of Madhya Pradesh**, Law Finder Doc Id # 1425500, in Criminal Appeal No.1306 of 2013, decided on 04.04.2029 has held as under:-

“8. Thus, if the offender is less than 21 years of age or a woman not convicted of an offence not punishable with death or imprisonment for life; such offender can be granted benefit of probation on satisfaction of the Court on the basis of parameters contained in Section 360 of the Code. However, in respect of an offender more than 21 years of age, the benefit of release is available only if the offence is punishable for less than seven years imprisonment or fine. The object of Section 360 of the Code is to prevent young persons from being committed to jail, who have for the first-time committed crimes through ignorance, or inadvertence or the bad influence of others and who, but for such lapses, might be expected to be good citizens.”

The Co-ordinate Benches of this Court in **Salil Khana vs. State of UT, Chandigarh**, Law Finder Doc Id # 1458854, in CRR No.4405 of 2016 decided on 11.03.2019 and in **Gurinder Singh vs. State of Haryana**, Law Finder Doc Id # 404544, in CRR No.2093 of 2012 dated 27.11.2012 also upheld the release of the convict therein on probation on

the ground that the convict is a first-time offender and there was no criminal history.

In view of the facts and circumstance of the case and on the anvil of the law settled, this Court does not find any infirmity in the view taken by learned Appellate Court and thus, the present petition is dismissed being devoid of any merit.

02.05.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No