

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 01.05.2023

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Pronounced on : 12.05.2023

+ CRL.M.C. 747/2023

GYARSI

.....Petitioner

Through: Mr. Ajay Goswami, Advocate
(through VC).

versus

THE STATE NCT OF DELHI

.... Respondent

Through: Mr. Amit Ahlawat, APP for the State.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present petition U/s 482 Cr.P.C. has been filed by the petitioner with the prayer to release the petitioner/convict on probation in case FIR No. 122/2013 under Section 380/454(II)/34 IPC, police station Amar Colony, Delhi.

2. Vide Judgment of Conviction dated 20.08.2018 and Order on Sentence dated 05.09.2018 passed by the Ld. MM-08, South East District, Saket Courts, New Delhi, the petitioner has been convicted U/s 454(II)/380/34 IPC and sentenced to SI for one year each and fine of Rs.

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1,000/- each for commission of offences U/s 454 (II)/380 IPC and in default of payment of fine simple imprisonment for 2 months in addition to substantive imprisonment. Both the sentences have been directed to run concurrently and benefit of section 428 Cr.P.C have also been given to the petitioner/convict.

3. Aggrieved by the Judgment dated 20.08.2018 and Order on Sentence dated 05.09.2018 passed by the Ld. MM, the petitioner preferred and appeal before the Sessions Court and the Ld. Sessions Court vide judgment dated 12.01.2023 dismissed the appeal filed by the petitioner and while dismissing the appeal of the petitioner, the Ld. Sessions Court has also dismissed the application U/s 360 Cr.P.C. read with Section 4 of Probation of Offenders Act filed by the petitioner.

4. By way of the present petition, the petitioner has challenged the impugned judgment dated 12.01.2023 passed by the Ld. Sessions Court only in respect of dismissal of her application U/s 360 Cr.P.C. read with Section 4 of Probation of Offenders Act and prayed for the release of the petitioner on probation.

5. In brief, the facts of the case are that on 03.04.2013, at about 12:00 noon at D-34, East of Kailash, New Delhi petitioner alongwith two other co-accused (since not arrested), committed house breaking by breaking the locks of the house of the complainant with an intention to commit theft and committed theft of cash, laptop, and other articles and was apprehended at the spot for committing the offence punishable U/s 454(II)/380/34 IPC and a

cash of Rs. 2160/- was recovered from her. The case was registered against the petitioner and after completion of investigation charge sheet was filed.

6. I have heard the Ld. APP for the State, Ld. counsel for the petitioner, perused the Status Report and also perused the records of this case.

7. It is submitted by the Ld. counsel for the petitioner that while dismissing the application of the petitioner U/s 360 Cr.P.C. read with Section 4 of Probation of Offenders Act, the Ld. trial court did not consider the fact that the petitioner is a woman having 3 minor children and there is no other female member in her family to look after her minor children. He further submitted that the Ld. trial Court has failed to consider the fact that the petitioner is not a previous convict. He prayed that the petitioner be released on probation. In the alternative, it is submitted by the Ld. counsel for the petitioner that since the petitioner is a lady having three minor children, and she has already undergone substantive part of the sentence, a lenient view be taken and if not on probation, she be released for the period of sentence already undergone by her.

8. On the other hand, it is submitted by the Ld. APP for the State that besides the present case, as per SCRB, the petitioner has also been previously involved in six other cases of burglary and house theft and she is a habitual offender and cannot be released on probation. He further submitted that there is no infirmity in the impugned judgment dated 12.01.2023 which has not even been challenged by the petitioner on merits and the only challenge is to the dismissal of the application U/s 360 Cr.P.C. read with Section 4 of Probation of Offenders Act.

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9. I have perused the Status Report as per which besides the present case, the petitioner has also been previously involved in six other cases of burglary and house theft and out of these six cases, she has also been convicted in one case bearing FIR No. 20/2008 U/s 380/411/34 IPC, P.S. CR Park on 07.11.2014 which shows that she is a habitual offender, so looking into the previous conduct of the petitioner and also the fact that she has been previously convicted in one case, I am not inclined to release her on probation and there is no infirmity in the impugned judgment dated 12.01.2023 as far as dismissal of the application U/s 360 Cr.P.C. read with Section 4 of Probation of Offenders Act moved by the petitioner is concerned.

10. As far as the prayer of the Ld. counsel for the petitioner to release the petitioner for the period of sentence already undergone by her is concerned, in the instant case, the petitioner is a lady and as per the report filed by the SHO P.S. Amar Colony, New Delhi she has three minor children namely Malad, Ram Kishan and Suraj aged around 2 years, 10 years, 15 years respectively and she is the sole care taker of her children. This report further states that present/permanent address of the petitioner is village Sampla, PS Kekari, District Ajmer, Rajasthan and she will reside at the above address after being released from jail.

11. The petitioner has been convicted U/s 454(II)/380/34 IPC and sentenced to SI for one year each and fine of Rs. 1,000/- each for commission of offences U/s 454 (II)/380 IPC and in default of payment of fine simple imprisonment for 2 months in addition to substantive CRL.M.C. 747/2023

imprisonment. I have perused the nominal roll dated 17.04.2023, according to which the petitioner has earned total remission of 15 days and further as per the nominal roll she has undergone a period of sentence of 4 months and 15 days till 17.04.2023. Therefore, considering the length of custody of the petitioner and the fact that the petitioner is a lady having 3 minor children aged around 2 years, 10 years, 15 years and she is the sole care taker of her children, in my considered opinion, the ends of justice shall be met if the sentence of the petitioner is reduced to the period already undergone by her.

12. Accordingly, the sentence of the petitioner is reduced to the period already undergone by her and she is directed to be released forthwith. The petition is disposed of accordingly. Trial Court Record, if any, be sent back forthwith alongwith a certified copy of this judgment. A copy of this judgment be also sent to concerned Jail Superintendent.

RAJNISH BHATNAGAR, J

MAY 12, 2023

Sumant