

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

107. CRM No.3688 of 2024 in
CRM No.29361 of 2023 in/and
CRA-S No.394 of 2023 (O&M)
Date of Decision:01.02.2024

Gurjinder Singh alias Cheema ... Appellant
Versus

State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. B.S. Kathurlia, Advocate
for the applicant-appellant.

Mr. Subhash Gadara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

CRM No.3688 of 2023

The present application has been filed under Section 482 Cr.P.C. for preponment of the misc. application bearing No.29361 of 2023 seeking suspension of the sentence imposed upon the applicant-appellant, which is listed for 01.04.2024.

Learned counsel for the applicant-appellant *inter alia* contends that the co-accused Parminder Singh @ Mahakal had approached this Court by filing CRA-S No.508 of 2023 and on 06.12.2023, this Court modified his sentence by upholding the judgment of conviction dated 19.01.2023 passed by the learned Additional Sessions Judge, Jalandhar to already undergone. It is further contended that the case of the applicant-appellant is at similar footing and he craves indulgence of this Court for similar relief. He has already undergone an actual sentence of 2 years 1 month and 19 days out of total sentence of 7 years.

In view of the aforesaid facts and circumstances, the present application is allowed and with the consent of parties, the main appeal itself is taken up for final disposal today instead of passing an order in the application for suspension of sentence.

CRM No.29361 of 2023

Since the main appeal itself is taken up for final disposal, learned counsel for the applicant-appellant does not press the application seeking suspension of sentence.

Dismissed as not pressed.

CRA-S No.394 of 2023 (O&M)

1. The present appeal has been preferred against the judgment dated 19.01.2023 and order of sentence dated 21.01.2023 passed by learned Additional Sessions Judge, Jalandhar, whereby the appellant/accused has been convicted for the commission of offences punishable under Sections 120-B, 342, 420 and 364 read with Section 120-B of Indian Penal Code and has been awarded sentence as under:-

Name of Convict	Offence	Sentence
Gurjinder Singh @ Cheema	Under Section 120-B of IPC	To undergo rigorous imprisonment for two years and to pay fine of Rs. 5,000/- and in default of payment of fine to further undergo rigorous imprisonment for one month.
	Under Section 342 read with Section 120-B of IPC	To undergo rigorous imprisonment for one year and to pay fine of Rs. 1,000/- and in default of payment of fine to further undergo rigorous imprisonment for ten days.
	Under Section 420 read with Section 120-B of IPC	To undergo rigorous imprisonment for four years and to pay fine of Rs. 50,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year.
	Under Section 364 read with Section 120-B of Indian Penal Code	To undergo rigorous imprisonment for seven years and to pay fine of Rs. 50,000/- and in default of payment of fine to further undergo rigorous imprisonment for one year.

FACTUAL BACKGROUND:

2. Brief facts of the prosecution case are that present case was registered on complaint bearing No.2603 dated 30.12.2014 moved by complainant Gurdeep Singh before SSP (Rural), Jalandhar, stating therein that accused Gurjinder Singh alias Cheema, Parminder Singh alias Mahakal, Sonika Malik and Sumit Malik induced him on the pretext of sending him abroad and obtained an amount of Rs.2,50,000/- from him by coming to his Village Tahli, Police Station Sadar Nakodar on car bearing registration No.PB-10-CS-1518. They also obtained his passport from him and asked him to arrange the remaining amount and further assured him that they would soon arrange a flight for him from Delhi and remaining amount would be taken by them after his reaching Canada. Thereafter on 08.12.2014, both the said accused asked him to come to Delhi and told him that his Visa had already been approved and further asked him to immediately reach Delhi alongwith his luggage. Thereafter, Parminder Singh alias Mahakal came to his house at Village Tahli in an Innova Car at about 05:30 pm on the same day and took him in said car to Ludhiana. From there he alongwith Gurjit Singh son of Sardar Singh of Haripur Khalsa, Police Station Phillaur, were taken to Delhi in Indo-Canadian bus and accused Parminder Singh alias Mahakal also accompanied them. Parminder Singh alias Mahakal told them that their flight would be booked immediately on reaching Delhi. On reaching Delhi, they were made to stay in a room at Gurudwara Sheesh Ganj Sahib and room was booked there in his name. On the next day i.e. 09.12.2014 in the evening, they were taken to a Hotel in Paharganj. There they took three separate rooms in their respective names. On 10.12.2014, Parminder Singh alias Mahakal introduced them to an unknown person, who was associate of all the accused. Thereafter, he, Gurjit Singh, Parminder Singh alias Mahakal

and said unknown person went to Bagh Dogra in a flight of Go-Airways. On reaching Bagh Dogra, Parminder Singh alias Mahakal told them that the person, who had accompanied them from Delhi, would take them to their destination. There, the said unknown person from Delhi introduced them to two other unknown persons. Parminder Singh alias Mahakal did not come out of the Airport. Thereafter, said three unknown persons made them to sit in a Scorpio Car and took them to some distance from Airport. There, they made them alight from said car at the point of pistol and made them sit on the floor. Said persons threatened them not to raise their neck, failing which they would neither reach abroad nor would be able to go back to their homes. Thereafter, he and Gurjit Singh were again made to sit in the same car and were taken to an unknown place. Their hands and feet were tied. At that unknown place, said persons took them to a room where 9 other persons were already confined. At that place, both he and Gurjit Singh were given severe beatings and were asked to talk to their family members from mobile No.912266851010 to intimate them that they were going to board a flight from Bombay Airport and would reach Canada after some time. They were kept in confinement in the same room. After about 24 hours, said persons again made them to call their family members from mobile no.0017788079742 and were forced to intimate their family members that they had reached Canada. Accused named above also talked to them when they were at that unknown place and all of them forced them to intimate their family members that they had reached Canada and to further ask their respective families to hand over remaining amount to accused persons. Under apprehension of danger to their life, they intimated their family members accordingly and accused persons obtained remaining amount from their family members. Even thereafter, accused persons did not care for them and mentally and physically

harassed them in the same room for about 14 days. They used to play same song at a high volume on speakers to harass them. Their hands and feet were tied behind and they were made to lay on the ground. They used to be given only meager food and water and used to be beaten mercilessly. They were kept in the same manner in said room from 10.12.2014 to 23.12.2014 and were physically and mentally harassed by the aforesaid persons. Thereafter, he and Gurjit Singh were made to wear colourful goggles and made to sit in a vehicle. Aforesaid persons kept on roaming for about one hour in the same vehicle and ultimately threw them from the same. At that place, they inquired from people present at the spot and found that they were in Nepal. They arranged some money by begging and came back to their respective home. On reaching home, they told about the occurrence to their family members and tried to find Gurjinder Singh alias Cheema, Parminder Singh alias Mahakal, Sonika Malik and Sumit Malik, who were working as travel agents and also went to their office being run in the name and style of Skyway Immigration, situated at Pakhowal Road, Ludhiana. Thereby accused persons have cheated the complainant and have obtained an amount of Rs.24,00,000/- and passport from him, which they have not returned.

CONTENTIONS

3. Mr. B.S. Kathuria, Advocate appearing for the appellant contends that he is not assailing the impugned judgment of conviction dated 19.01.2023 on merits and restricts his prayer to modification of the order dated 21.01.2023 on quantum of sentence to that of the sentence already undergone by the appellant. The appellant was convicted under Sections 120-B, 420, 342 and 364 read with Section 120-B of IPC and sentenced to undergo substantive sentence of 07 years with default mechanism. He has already undergone more than 02 years of

custody. No other case was pending against him prior to the registration of the present FIR.

4. Learned counsel for the appellant further contends that appellant has reformed and intends to live a fruitful and peaceful life. It is also contended by counsel for the appellant that there is no minimum sentence provided under Section 120-B, 420, 342 and 364 read with Section 120-B of IPC and therefore, prays that order of sentence of the appellant be modified to that of sentence already undergone by him.

5. Per contra, learned State counsel opposes the prayer of the appellant for modification of the order of sentence to that of already undergone on the ground that the learned trial Court has passed a well reasoned judgment based on correct appreciation of evidence available on record.

ANALYSIS AND OBSERVATION:

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 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 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 reformatory.

10. As per the custody certificates produced by the learned State counsel, the appellant has undergone actual custody period of 2 years 1 month and 19 days out of total sentence of 7 years.

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 appellant has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION:

12. The FIR in the present case was lodged on 01.01.2015 and the appellant has suffered the agony of trial for more than 09 years. After his conviction, he has grown into law abiding citizen with a desire to live a fruitful and peaceful life. He is not involved in any other criminal activity after his conviction in the present case and during the pendency of the present Criminal Appeal. The appellant has already undergone actual sentence of more than 02 years 01 month and 19 days out of the substantive sentence of 07 years awarded to him. Accordingly, this Court is of the opinion that it would be in the interest of justice if sentence of rigorous imprisonment for 07 years awarded to the appellant is reduced to the period already undergone by him.

13. Consequently, the present appeal is disposed of in the following terms:-
- (i) The judgment dated 19.01.2023 passed by the Additional Sessions Judge, Jalandhar convicting the appellant is upheld, however, the order on quantum of sentence dated 21.01.2023 is modified to the extent that the substantive sentence of rigorous imprisonment for 07 year awarded to the appellant is reduced to the period of sentence already undergone by him.
 - (ii) The sentence of fine of an amount of (Rs.5,000+1000+50,000+50,000 =1,06,000/-) is kept intact. The appellant is directed to deposit the amount of fine, if not already paid, in the trial Court within one month from the date of receipt of certified copy of this order and in case of default of payment of fine, the appellant would be liable to be taken into custody and made to undergo rigorous imprisonment for three months.
 - (iii) On receipt of certified copy of this order, the appellant herein be released forthwith. if his custody is not required in any other case.
14. Pending miscellaneous application(s), if any, shall also stand disposed of.
15. The case property, if any, may be dealt with as per rules after expiry of period of limitation for filing the revision petition. Record of the case be sent back to the Court below.

(HARPREET SINGH BRAR)
JUDGE

February 01, 2024

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No