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

CRR-1137-2018 (O&M)
Date of decision : 11.11.2024

Hari Kishan @ Rana

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ramesh Goyat, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J.(Oral)

1. The instant revision petition has been filed challenging the judgment of conviction and order on quantum of sentence, both dated 29.09.2017, passed by the Court of learned Judicial Magistrate First Class, Faridabad (*hereinafter referred to as 'learned trial Court'*) in Criminal Case No. 55, titled as ***State vs. Hari Kishan @ Rana***, arising out of FIR No. 502 dated 10.11.2014, registered under Sections 323 and 324 of IPC at Police Station Mujessar, Faridabad, whereby the petitioner was held guilty for commission of aforementioned offences and was sentenced to undergo maximum rigorous imprisonment for a period of 06 months with default clause. The petitioner has also challenged the judgment dated 06.03.2018, passed by the Court of learned Sessions Judge, Faridabad (*hereinafter referred to as 'learned appellate Court'*) in Criminal Appeal No. 1019 of 2017, titled as ***Hari Kishan @ Rana vs. State of Haryana***, whereby while

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upholding the judgment of conviction and order on quantum of sentence, as passed by the learned trial Court, the appeal of the petitioner was dismissed.

2. After arguing for some time, learned counsel for the petitioner did not press the grounds as taken in the revision petition and restricted his argument to the extent that benefit of probation be granted to the petitioner. Since the petitioner is not challenging the impugned judgments passed by the Court below on their merit and seeking benefit of probation, the sole consideration before this Court is as to whether the prayer made by the petitioner for extending benefit of probation can be accepted or not?

3. As mentioned above, the petitioner had been held guilty by the trial Court for commission of offences punishable under Sections 323 and 324 of IPC in the year 2017. The petitioner had then filed an appeal before the learned appellate Court but the same had been dismissed in the year 2018. The petitioner had then preferred this revision petition and vide order dated 26.03.2018, his sentence was suspended during the pendency of the revision petition before this Court. The petitioner is on bail for the last about 06 years. Much water has flown since then. The present revision petition is pending since the year 2018. The petitioner is facing rigors of litigation from the last more than 10 years. The petitioner has already undergone actual imprisonment a period of 23 days and in the intervening period, he is not involved in any other criminal case. He is leading happy and peaceful life with his family. Hence, learned counsel for the petitioner has urged that the petitioner is entitled to the benefit of probation.

4. Custody certificate has been filed by the respondent-State, as per which, the petitioner has undergone actual sentence of 23 days and he is not

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involved in any other case. Learned State counsel has no serious objection to the limited prayer made by the petitioner.

5. Before considering the prayer made by the petitioner to release him on probation, let us have a look on the law on this point. The aims and object of the Probation Act came to be decided by Hon'ble Apex Court in case ***Jugal Kishore Prasad v. State of Bihar, 1972 AIR (SC) 2522***. Hon'ble Supreme Court while considering the scope of the Probation Act had held as under:-

"The Probation of Offenders Act was enacted in 1958 with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected therewith. The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consequence with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals."

6. Reliance can also be placed upon ***Isher Das v. State of Punjab, AIR 1972 Supreme Court 1295*** and ***Arvind Mohan Sinha v. Amulya Kumar Biswas and others, 1974 AIR (SC) 1818***, wherein Hon'ble Supreme Court

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had taken the similar view. Relevant paragraph of Arvind Mohan Sinha's case (supra) reads as under:-

"The Probation of Offenders Act is a reformatory measure and its object is to reclaim amateur offenders who, if spared the indignity of incarceration, can be usefully rehabilitated in society. A jail term should normally be enough to wipe out the stain of guilt but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attached to convicts often render the remedy worse than the disease and the year purposes of punishment stands in the danger of being frustrated. In recalcitrant cases punishment has to be deterrent so that others similarly minded may warn themselves of the hazards of taking to a career of crime. But the novice who strays into the path of crime ought, in the interest of society, be treated as being socially sick. Crimes are not always rooted in criminal tendencies and their origin may lie in psychological factors induced by hunger, want and poverty. The Probation of Offenders Act recognises the importance of environmental influence in the commission of crimes and prescribes a remedy whereby the offender can be reformed and rehabilitated in society. An attitude of social defiance and recklessness which comes to a convict who, after a jail term, is apt to think that he has no more to lose or fear may breed a litter of crime. The object of the Probation of Offenders Act is to nip that attitude in the bud. Winifred A Sikin describes probation as a system which provides a means of re-education without the necessity of breaking up the offender's normal life and removing him from the natural surroundings of his home. (English Juvenile Courts (1938) page 162) Edwin R. Sutherland raises it to a status of a convicted offender. (Principles of Criminology, 4th Edn. (1947) page 383)."

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7. In view of the ratio of law as laid down in aforecited judgment, the question that arises before this Court is that as to whether the petitioner is entitled to the benefit of probation or not ? In the considered opinion of this Court, the answer to this question must be in the affirmative.

8. The object underlying the provisions of Sections 4 and 6 of the Probation of Offenders Act, 1958 (*for brevity "the Probation Act"*) and Sections 360 & 361 of Cr.PC, is that the first offenders be not sent to jail for the commission of less serious offences, on account of grave risk to their attitude to life to which they are likely to be exposed as a result of their association with the hardened and habitual criminal inmates of the jail. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. This would clearly cause more harm than to reform them, and for that reason, it would perhaps also be to an extent prejudicial to the larger interests of the society as a whole. Perhaps that was the reason that the mandatory injunction against imposition of sentence of imprisonment has been embodied in Section 6 of the Probation Act. This mandate is inspired by the desire to keep the young delinquent/first offenders away from the possibility of association or close contact with hardened criminals and their evil influence. Therefore, these beneficial provisions have to be liberally construed.

9. The sole intention of the legislature in passing probation laws is to give person of a particular type of chance of reformation, which they would not get if sent to prison. The types of persons, who are in the contemplation of the legislature under the probation law are those who are not hardened or

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dangerous criminals, but those who have committed offences under some momentary weakness of character or some tempting situation. By placing the offender on probation, the Court saves him from the stigma of jail life and also from the contaminating influence of hardened prison inmates. Probation also serves another purpose, which is quite significant though of secondary importance. It helps in eliminating overcrowding in jails by keeping many offenders away from the prison. Section 360 Cr.P.C. deals with order to release the accused on probation of good conduct or after admonition, whereas Section 361 Cr.P.C. provides *that "where in any case the Court could have dealt with an accused person under Section 360 or under the provisions of the Probation Act, but has not done so, it shall record in its judgment the special reasons for not having done so."*

10. Therefore, the conjoint and meaningful reading of the beneficial provisions of the Probation Act would reveal that non-obstante clause contained in Section 4 that points to the conclusion that the provisions of this Section would have overriding effect, shall prevail if the conditions described therein are fulfilled. Meaning thereby, the Court has the ample power to release the first offender of minor offences on probation, keeping into focus the nature and manner of the crime, age of the offender, other antecedents and attending circumstances of the offence instead of committing him to jail.

11. Likewise, Section 4 of the Probation Act postulates that 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 the opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is

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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. The learned State counsel has acknowledged the factual matrix of the case and legal position.

12. Therefore, in view of the discussion as made above and while taking into consideration the agony and trauma, which the petitioner has undergone during protracted trial, appeal, revision, his antecedent, nature of offence, totality of other facts and circumstances emanating from the record, this Court is of the considered opinion that no useful purpose would be served by sending him again into jail to serve out the remaining period of sentence and instead of sending him to prison, he be released on probation. Accordingly, it is directed that petitioner be released on probation on his furnishing personal bond (within one month) in the sum of Rs. 25,000/- with one surety of the like amount before the learned trial Court, subject to the condition that he would keep the peace and be of good behaviour, for a period of two years from the date of passing of this order and shall disclose his present address and phone number before the trial Court in the form of an affidavit at the time of furnishing bonds. Needless to mention that in case, he is found to be indulged in any illegal activities, the sentence awarded to him by the learned trial Court shall stand revived.

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13. As such, the instant revision petition is hereby dismissed on merits and the impugned judgments are upheld. However, the order of sentence is accordingly modified to the extent and in the manner depicted herein above.

14. Needless to mention that natural consequences and compliance will follow accordingly.

11.11.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No