

238

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRA-S-2851-2023(O&M)
Date of decision:-10.04.2024

BIJENDER

... Appellant

Versus

STATE OF HARYANA

... Respondent

CORAM:- HON'BLE MR. JUSTICE SANJIV BERRY.

Present:- Mr. Madhur Singh, Advocate
for the petitioner.
Mr. Dhruv Sihag, DAG, Haryana.

SANJIV BERRY, J.(ORAL)

Instant appeal has been preferred against the judgment of conviction dated 26.05.2023 and order of sentence dated 29.05.2023, passed by learned Additional District and Sessions Judge, Rohtak whereby the appellant had been held guilty in case FIR No.268 dated 06.07.2019, under Sections 379-B, 392, 397, 201 of IPC registered at Police Station Sadar Rohtak, appellant was sentenced as under: -

Name of convict	Offence	Period of sentence and fine imposed	Period of sentence in default of payment of fine.
Bijender	379-A IPC	RI for 5 years with a fine of ₹ 5000/-	RI for three months.

2. Feeling aggrieved by the aforesaid conviction and order of sentence, appellant has preferred the present appeal.

3. It has been *inter alia* contended by learned counsel for the appellant at the very outset that the appellant does not challenge the finding recorded by the learned trial Court in the judgment of conviction dated 26.05.2023 but his only limited prayer is for seeking modification of the order of sentence dated 29.05.2023 passed by the learned trial Court (supra) by submitting that the petitioner has already undergone more than 04 years , 04 months and 09 days in custody and petitioner is ready to deposit the fine, as such he prayed that the period already undergone by he petitioner in custody may be treated as sentence undergone and the impugned order of sentence be modified accordingly.

4. Learned State Counsel has produced the custody certificate dated 08.04.2024 to contend that the appellant has already undergone 04 years, 04 months and 09 days out of the total sentence of 5 years awarded to him.

5. After hearing the arguments advanced by learned counsel for the parties, it transpires that although the learned counsel for the appellant has not challenged the genuineness of the impugned judgment of conviction dated 26.05.2023 and in order of sentence dated 29.05.2023 but yet from the perusal of the impugned judgment, it transpires that it is based on correct appreciation of evidence on record and is not suffered from any infirmity so as to call for any interference. As a consequent the conviction recorded vide judgment dated 26.05.2023 and order of sentence dated 29.05.2023 by learned Additional District and Sessions Judge Rohtak against the appellant is hereby upheld.

6. Coming to the limited request raised by the learned counsel for the appellant in this case seeking modification of order of sentence dated 29.05.2023, admittedly, as per the custody certificate, the appellant has already undergone 04 years, 04 months and 09 days of actual custody, therefore, in these circumstances considering the fact that the appellant has already undergone 04 years , 04 months and 09 days of actual custody out of 5 years awarded vide the impugned order of sentence dated 29.05.2023, it is deemed a fit case where order of sentence can be modified, as no minimum sentence is prescribed for the said offence for which appellant has been convicted.

7. Resultantly, in the circumstances of the case, the impugned order of sentence dated 29.05.2023 is modified to the period already undergone by the appellant in custody, therefore, the present appeal is disposed of with the modification in the impugned order of sentence dated 29.05.2023 passed by learned Additional Sessions Judge, Rohtak, thereby reducing the sentence of the appellant to the already undergone custody period by him subject to payment of ₹5,000/- as fine imposed vide impugned order dated 29.05.2023 in default of the payment of fine he has to further undergo rigorous imprisonment for three months.

8. Pending application(s), if any, shall stands disposed of.

(SANJIV BERRY)
JUDGE

10.04.2024
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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |