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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2836-2023 (O & M)

Date of Decision: 08.02.2024

Santokh Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. B.S. Kundra, Advocate for the petitioner.

Mr. Subhash Godara, AAG Punjab

HARPREET SINGH BRAR, J. (ORAL)

CRM-52005-2023

This is an application under Section 389(2) of the Cr.P.C. seeking stay of sentence imposed by learned Additional Sessions Judge, Rupnagar during the pendency of the appeal.

Learned counsel for the petitioner wishes to withdraw the present application and confines his prayer to the extent of modification of the order on quantum of sentence as the petitioner is a first time offender and is not involved in any other case. Furthermore, he has already suffered incarceration for a period over 5 months.

In view of the above, the application stands dismissed as withdrawn, however, with the consent of both parties, the main case is taken on board today itself.

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1. This revision has been preferred against the judgment dated 29.08.2023 passed by learned Additional Sessions Judge, Rupnagar vide

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which, judgment of conviction dated 11.06.2018 and order of quantum of sentence dated 12.06.2018 passed by Judicial Magistrate Ist Class, Rupnagar in FIR No. 63 dated 01.05.2010 under Sections 279, 304-A, 337, 338 and 427 of IPC registered at Police Station Morinda was upheld. The petitioner was sentenced as under:-

Offence	Sentence
Section 279 IPC	Simple imprisonment of 2 months
Section 337 IPC	Simple imprisonment of 2 months
Section 338 IPC	Simple imprisonment of 1 year
Section 304-A IPC	Simple imprisonment of 1 year

FACTUAL BACKGROUND

2. The facts, in brief, are that on 01.05.2010, complainant Dilbar Singh and his cousin Barinder Singh were traveling on a motorcycle bearing registration no. PB-23-J-1469 when a truck bearing registration no. PB-23-E-1276 driven by the petitioner in a rash and negligent manner hit the motorcycle from behind. The driver- Barinder Singh lost control of the motorcycle and another truck bearing registration no. PBW-1675 being negligently driven at a high speed by Mehma Singh drove right over the motorcycle due to which Barinder Singh died on the spot. The complainant suffered grievous injuries on his right arm and head. The petitioner fled away from the spot but was apprehended by the villagers at a distance.
3. On finding a *prima facie* case, the petitioner-accused was charge-sheeted under Sections 279, 337, 338, 304-A of IPC to which, he pleaded not guilty and claimed trial. The prosecution examined as many as 11 witnesses to

prove its case. The statement of the accused under Section 313 Cr.P.C. was recorded wherein he denied all incriminating evidence put to him and pleaded false implication. However, he did not lead any evidence in his defence.

4. On assessing the material available on record, the petitioner was convicted by the learned trial Court vide judgment dated 11.06.2018. Aggrieved by the same, the petitioner preferred an appeal before the Additional Sessions Judge, Rupnagar, which was dismissed vide judgment dated 29.08.2023

CONTENTIONS

5. Learned counsel for the petitioner contends that he is not assailing the impugned judgment of conviction dated 11.06.2018 on merits and restricts his prayer to modification of the order of quantum of sentence dated 12.06.2018 to that of the sentence already undergone by the petitioner as has already undergone a period of 5 months 12 days of custody. No other case is pending against him prior to the registration of the present case.

6. Learned counsel for the petitioner further submits that petitioner is 57 years of age. He has reformed and intend to live his life as a law-abiding citizen.

7. Per contra, learned State counsel opposes the prayer of the petitioner as the learned trial Court has passed a well-reasoned judgment based on correct appreciation of evidence available on record, which has been upheld by the learned lower Appellate Court. The sentence of the petitioner has already been reduced by the learned Appellate Court and as such, in view of the fact that the petitioner has been convicted for causing death of a human being by rashly and negligently driving the truck on a public way, as such, he

does not deserve any leniency.

ANALYSIS AND OBSERVATIONS

8. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

9. 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 of the Hon'ble Supreme Court 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.

12. As per the custody certificate produced by the learned State counsel, details of custody period of the petitioner are tabulated as under:-

Sr No.	Particulars	Period	Duration
1.	Custody under trial	-	-
2.	Custody after conviction	29.08.2023 to 07.02.2024	5 months 12 days
3.	Interim bail	-	-
4.	Actual custody period after conviction	29.08.2023 to 07.02.2024	5 months 12 days
5.	Actual undergone period	29.08.2023 to 07.02.2024	5 months 12 days
6.	Earned remission	-	-
7.	Total sentence including remission		5 months 12 days

13. A perusal of the judgment of conviction passed by the trial Court and the lower Appellate Court indicates no perversity in their finding and the same are based on correct appreciation of evidence available on record. Learned counsel for the petitioner has not assailed the judgment of conviction on merits, rather he has restricted his prayer only qua quantum of sentence.

CONCLUSION

14. The FIR in the present case was lodged on 01.05.2010 and the petitioner has been facing the agony of trial for about 14 years now. He is not involved in any other criminal activity after his conviction in the present case and during the pendency of the present revision. As per his custody certificate, there are no other criminal cases pending against him. Out of the total substantive sentence of 1 year, he has undergone actual sentence of 5 months 12 days. Accordingly, this Court is of the opinion that it would be in the interest of justice, if the sentence of simple imprisonment of 1 year awarded to the petitioner is reduced to the period already undergone by him.

15. Consequently, the present revision is disposed of in the following terms:-

- (i)

The judgment dated 29.08.2023 passed by the Additional Sessions Judge, Rupnagar confirming the conviction of the petitioner is upheld, however, the order of sentence dated 12.06.2018 is modified to the extent that the sentence of simple imprisonment for 1 year along with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him.
- (ii)

However, the petitioner is directed to deposit an amount Rs. 10,000/-as fine 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 petitioner shall be liable to be taken into custody and made to undergo rigorous imprisonment for one month.

16. The petitioner is ordered to be released in the present case forthwith, if not required in any other case. Pending miscellaneous application(s), if any, shall also stand disposed of.

08.02.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No