



\$~82

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

+ **CRL.REV.P. 705/2024 & CRL.M.A. 16274/2024**

JAI RAM

..... Petitioner

Through: Mr. Saleish Tiwari and
Mr. Pankaj, Advs.

versus

STATE NCT OF DELHI AND ANR. Respondents

Through: Mr. Pradeep Gahalot, APP
for the State with Ms.
Kavita Gupta, Ms. Dimple
and Ms. Divya Singh,
Advs. with SI Sanjeet
Rathee, PS Malviya
Nagar.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

%

24.05.2024

1. The present petition is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (**CrPC**), challenging the order dated 27.02.2024 (hereafter '**impugned order**'), passed by the learned Principal District & Sessions Judge (**PDSJ**), South District, Saket Courts, New Delhi in SC No. 133/2018 in FIR No. 138/2017 registered at Police Station Malviya Nagar, for offences under Sections 308/323/34 of the Indian Penal Code, 1860 (**IPC**).

2. The learned PDSJ, by impugned order, has convicted Respondent No. 2 for offence under Section 308 of the IPC. However, keeping in view of the facts and circumstances, Respondent No. 2 has been released on probation bond of ₹10,000/- for a period of one year.

3. The petitioner is aggrieved that the sentence awarded is disproportion.

4. The learned counsel for the petitioner submits that once the

CRL.REV.P. 705/2024

Page 1 of 4



respondent was convicted for offence under Section 308 of the IPC which attracts imprisonment which may extend to seven years, the convict ought not to have been released on probation.

5. The learned Additional Public Prosecutor for the State submits that the present petition is not maintainable in terms of proviso to Section 372 of the CrPC.

6. He submits that in case of acquittal or inadequate compensation, the victim has a remedy of challenging the order of acquittal by filing an appeal.

7. Since an appeal against an order passed by the learned Sessions Judge would be maintainable before the High Court, on an oral request of the learned counsel for the petitioner, the present petition is treated as a Criminal Appeal and is directed to be renumbered as Crl. Appeal No.

8. Section 4 of the Probation of Offender Act, 1958 (hereafter '**the Act**') reads as under :

"4. Power of Court to release certain offenders on probation of good conduct

(1) 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 opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is 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: Provided that the Court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the Court exercises



jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the Court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the Court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the offender.

(4) The Court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the Court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The Court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned."

9. Section 4 of the Act gives power to the Court where the accused is found guilty of committing an offence which is not punishable with either life or death to release such accused on probation. The Court is, however, required to consider the circumstances of the case such as nature of the offence; character of the offender; consideration of the report, if any, of the Probation Officer. Thus, if the Court is satisfied that the accused was not previously convicted and satisfy the other conditions as stated, an order can be passed for release of the accused on probation on furnishing a bond with or without surety.

10. In the present case, the learned PDSJ noted the report of
CRL.REV.P. 705/2024

Page 3 of 4



the Probation Officer who had stated that the Respondent No. 2 had no prior antecedents. The Respondent No. 2 is stated to have retired from a government service and admittedly had no intention to kill the complainant. The convicts had also shown their repentance and have stated that it was a mistake on their part and will not repeat such act in future.

11. The FIR was registered pursuant to the complaint alleging that the complainant works in a shop in Malviya Nagar and there was some altercation with the accused persons, who runs adjoining shop. The Respondent No. 2 is father of one of the accused persons who had an altercation with the complainant. The Respondent No. 2 has hit the complainant on head. Thereafter, complainant started bleeding and fell down.

12. It is not denied that the Respondent No. 2 is 67 years of age and has spent more than two months in custody. He has no prior antecedents and was employed as a government servant and has since retired.

13. As noted by the learned Trial Court, Respondent No. 2 and other accused persons have shown their repentance and have undertaken not to commit such mistake in future. The report of the Probation Officer also is favourable.

14. In the opinion of this Court, the learned Trial Court has aptly exercised the power under Section 4 of the Act and the impugned order, thus, warrants no interference.

15. The present petition is therefore dismissed.

AMIT MAHAJAN, J

MAY 24, 2024

“KDK”/“SK”