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

+ CRL.REV.P. 897/2024 & CRL.M.A. 20535/2024, CRL.M.A.
20536/2024, CRL.M.(BAIL) 1165/2024

SHAHNAWAZ @ SONU @ FAZRUDDINPetitioner

Through: Mr. Aman Panwar, Advocate.

versus

STATE NCT OF DELHIRespondent

Through: Mr. Utkarsh, APP for the State with
SI Dinesh Joshi, P.S.: Amar Colony.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

16.07.2024

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By way of the present criminal revision petition filed under section 397 read with 401 of the Code of Criminal Procedure 1973, the petitioner impugns judgment dated 19.02.2024 passed by the learned ASJ dismissing appeal bearing CA No. 64/2019, which had been filed impugning judgment of conviction dated 17.12.2018 and sentencing order dated 08.01.2019 passed by the learned Magistrate in case FIR No.604/2009 registered at P.S. : Amar Colony, New Delhi.

2. By way of the judgment of conviction, the petitioner was convicted for the offences under sections 379/34 and section 174-A of the Indian Penal Code 1860 ('IPC'), and was sentenced to simple imprisonment of 02 years for the offence under sections 379/34 IPC and to 01 year simple imprisonment for the offence under section



174-A IPC alongwith fine of Rs.2,000/-, and a default sentence of 02 months in case of non-payment of fine. The fine is stated to have been paid by the petitioner in court.

3. Mr. Aman Panwar, learned counsel appearing for the petitioner submits, that as would be seen from the record, the role ascribed to the petitioner was that he had run-away with a mobile phone that had been pick-pocketed by co-accused Shahid, for which offence both were tried; and the judgment of conviction and sentence have come to be passed.
4. Mr. Panwar points-out that Shahid was arrested on-the-spot whereas the petitioner was alleged to have fled the spot and was arrested subsequently.
5. Counsel submits that *vide* judgment dated 14.03.2024 passed in a criminal revision petition bearing CRL.REV.P. No.336/2024 filed by co-accused Shahid (impugning judgment dated 29.01.2024 passed by Ld. ASJ in the criminal appeal upholding judgment of conviction dated 17.12.2018 and sentencing order dated 08.01.2019 passed by learned Magistrate), a Co-ordinate Bench of this court has passed an order upholding the conviction but modifying the sentence to the period already undergone, subject to payment of a further fine. Counsel submits that the Co-ordinate Bench has done so observing that the offence relates to the year 2009; that the petitioner in that case had already undergone incarceration of 03 months and 11 days (with remission of 03 days); that his jail conduct was satisfactory; and that he was not involved in any other matter.



6. Counsel for the petitioner further submits that though the petitioner is not challenging his conviction, the role ascribed to the petitioner was somewhat less egregious than the role attributed to the co-accused Shahid. Counsel also argues, that in fact running away with a phone that was handed to the petitioner, after the phone had been pick-pocketed by the co-accused would imply that the petitioner was only guilty of having been found in possession of stolen property, which may not make-out a case under section 379IPC. Besides, it is pointed-out that the stolen phone was never recovered from the petitioner.
7. Counsel submits that the petitioner is entitled to parity with the co-accused Shahid; and that therefore, the present petition be disposed of on the same lines as the aforesaid judgement of the Co-ordinate Bench.
8. Issue notice.
9. Mr. Utkarsh, learned APP appears for the State on advance copy; accepts notice; and leaves it to the court to pass appropriate orders.
10. Nominal roll dated 13.06.2024 filed in the present case shows that the petitioner has undergone 03 months and 27 days of actual imprisonment as of 06.06.2024, which would mean about 5 months as of date. Furthermore, the nominal roll records that the petitioner's overall jail conduct has been 'satisfactory'; and that he is not involved in any other criminal case.
11. A copy of judgment dated 14.03.2024 passed in the case of co-accused Shahid has been appended with the present petition. Upon a perusal of the said judgment, this court does not find any ground that would differentiate the petitioner's case from that of the co-accused.



12. It is also noticed that the petitioner has already spent longer in custody than the co-accused.
13. In the circumstances, the petition is allowed, thereby *upholding the conviction* of the petitioner but *modifying the sentence* imposed to the period already undergone by the petitioner, subject to the petitioner paying an additional fine of Rs.3,000/- at the time of his release.
14. Subject to the above, the petitioner is directed to be released from custody *forthwith*, unless required in any other case.
15. Bail bonds furnished are cancelled; sureties stand discharged.
16. A copy of this order be communicated to the learned Trial Court as well as to the concerned Jail Superintendent *forthwith*.
17. The petition is disposed-of in the above terms.
18. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JULY 16, 2024/ak