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

+ **CRL.A. 633/2022**

MUKESH

..... Appellant

Through: Mr. Satyam Thareja & Mr. Pratyaksh
Sikodia, Advocates.

versus

THE STATE GOVT OF NCT DELHI

..... Respondent

Through: Ms. Shubhi Gupta, APP with SI
Ankur, PS-Nihal Vihar, for State.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

14.03.2024

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CRL.M.A. 19454/2023 (for disposal of appeal, by Appellant)

1. This is an application filed on behalf of the Appellant under Section 482 Cr.P.C. for disposal of the appeal and release of the Appellant on sentence already undergone as the Appellant is willing to accept the conviction and does not press the appeal.
2. Present appeal was filed under Section 374(2) Cr.P.C. read with Section 482 Cr.P.C. challenging judgment dated 18.05.2022 whereby Appellant was convicted for offence punishable under Section 370(2) IPC and sentenced to RI for 09 years with fine of Rs.20,000/- and in default of fine with SI for a period of 06 months, vide order on sentence dated 08.09.2022.
3. Learned counsel for the Appellant submits that the Appellant was awarded a total sentence of 09 years with fine and in default simple imprisonment for 06 months and has already undergone nearly 07 years 07



months in judicial custody excluding remission. Appellant has also undergone the minimum sentence of 07 years under Section 370(2) IPC and is willing to accept the conviction and does not press the appeal. Prayer is made to release the Appellant on the sentence undergone in line with the observations of the Supreme Court in order dated 06.10.2021 passed in ***Sonadhar v. State of Chhattisgarh*** in ***SLP (Crl.) 529/2021***. It is further stated that the Appellant is 42 years of age and has a family comprising of two young daughters, four sons, wife and aged mother who is 70 years of age and there is no other earning member in the family. Jail conduct of the Appellant is 'satisfactory'.

4. Learned counsel further places reliance on the judgments of this Court in ***Balak Ram and Another v. State*** in ***CRL.A. 149/2003***, decided on 15.10.2015; ***Akshay v. State*** in ***CRL.A. 141/2016***, decided on 28.02.2023; ***Sonu v. State*** in ***CRL.A. 281/2023***, decided on 10.05.2023; and ***Subhash v. State, 2024 SCC OnLine Del 597***, where Courts have released the Appellants therein on sentence undergone on accepting conviction.

5. Ms. Shubhi Gupta, learned APP appearing for the State submits that Appellant has been convicted for serious offences and there is enough material and evidence on record to uphold the conviction. She, however, submits that in view of the order of the Supreme Court in ***Sonadhar (supra)***, final decision is left to the Court.

6. I have heard learned counsel for Appellant as well as the learned APP for the State.

7. Appellant has been convicted and sentenced to RI of 09 years with fine of Rs.20,000/- and in default of payment of fine, SI for 06 months in respect of offence punishable under Section 370(2) IPC. Nominal roll



indicates that the Appellant has undergone 07 years and 07 months in judicial custody and has therefore undergone the minimum sentence prescribed for the said offence. On 04.09.2023, Appellant was produced from jail through video conferencing and as recorded in the order had stated that he does not wish to press the appeal and is willing to accept conviction, if released on the sentence undergone. The Supreme Court in *Sonadhar (supra)* while dealing with the status of criminal cases, huge pendency of trials and appeals etc. in Courts, long incarceration periods of both under-trials and convicts, *inter alia* gave the following directions:-

“SLP(CRL.) NO. 514/2021

APPEALS PENDING BEFORE THE HIGH COURTS WHICH ARE BEING LOOKED AFTER BY THE HIGH COURT LEGAL SERVICES COMMITTEES :

Mr. Devansh A. Mohta, learned Amicus Curiae presented the aspects arising from appeals pending before the High Courts which are being looked after by the High Court Legal Services Committee. A detailed exercise was undertaken with the Secretary, Delhi High Court Legal Services Committee on account of data and proximity and a list of all criminal appeals, which accused is in custody, pending in the Delhi High Court and being looked after by the High Court Legal Services Committee was prepared and a chart shared with the NALSA.

What emerges from the chart is that in 232 such cases fixed term sentences have been imposed ranging from 3 years to 20 years while the remaining 129 cases are life sentence cases. In fixed term sentences, the accused in some cases has undergone more than half the sentence, if not more, similarly in some life sentence cases, the accused has undergone custody for more than 10 years.

The other High Court where this aspect has been explored is the Chhattisgarh High Court, more so, in the context of the reliance placed by Mr. Mohta on rule 149 of the High Court of Chhattisgarh as recorded in the Order dated 07.07.2021. It is in view thereof certain suggestions have been made and we have heard learned counsel for parties. We are in broad agreement with these suggestions and would seek to expand on the same.

We thus issue the following directions:



a) *A similar exercise be undertaken by the High Court Legal Services Committee of different High Courts so that convicts represented by legal aid Advocates do not suffer due to delay in hearing of the appeals. NALSA will circulate this order to the concerned authority and monitor the exercise to be carried on.*

b) *The Delhi High Court Legal Services Committee would take up the cases of those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the feasibility of filing bail applications before the High Court, while in case of 'life sentence' cases, such an exercise may be undertaken where eight years of actual custody has been undergone.*

c) ***We are of the view that in fixed term sentence cases, an endeavor be made, at least as a pilot project, in these two High Courts to get in touch with the convicts and find out whether they are willing to accept their infractions and agree to disposal of the appeals on the basis of sentence undergone.***

d) *A similar exercise can be undertaken even in respect of 'life sentence' cases where the sentenced persons are entitled to remission of the remaining sentence i.e., whether they would still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts.*

Our aforesaid additional directions are based on a premise that at times if a convict has actually done of what he is accused of and he is remorseful, he may be willing to accept his acts and suffer a lesser sentence. We make it clear that the objective is not to compel or extract acceptance from such convicts depriving of the right of appeal."

(Emphasis supplied)

8. As a pilot project or a test case, the Supreme Court directed the two High Courts, as referred therein, to get in touch with the convicts to find out whether they were willing to accept their infractions and agree to disposal of the appeals on the basis of sentence undergone. Basis the order of the Supreme Court and the objective behind the directions, this Court has in aforesaid cases directed release of the convicts, who had undergone substantial sentence and were willing to accept the infractions of law.

9. After hearing learned counsel for Appellant, Court is satisfied that the Appellant is remorseful for the offence committed and has attempted to



explain the circumstances in which it was committed. Para (c) of the directions in *Sonadhar (supra)*, as extracted above, allows release of prisoners, who have been awarded a fixed term sentence, if they are willing to accept the infraction, on the sentence undergone. On an overall conspectus of the case and the mitigating circumstances brought forth by the learned counsel for the Appellant that the jail conduct of the Appellant is ‘satisfactory’ and he has a family of 08 people to support as well as considering the sentence undergone, this Court is of the view that the case of the Appellant falls within the scope and ambit of the order of the Supreme Court in *Sonadhar (supra)*.

10. Accordingly, while upholding the judgment of conviction dated 18.05.2022, the sentence awarded to the Appellant vide order dated 08.09.2022, including sentence of fine imposed is reduced to the period already undergone. *Ex-consequenti*, Appellant is directed to be released from prison on the sentence undergone in this case, if not required in any other case.

11. Application is allowed and disposed of.

12. Copy of the order be sent to the concerned Jail Superintendent for information and necessary compliance.

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13. Appeal is disposed of in the aforesaid terms along with pending application.

JYOTI SINGH, J

MARCH 14, 2024

B.S. Rohella/shivam