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262 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRR-717-2025 (O&M)
Date of Decision: 15.05.2025

MUKESH KUMAR @ MUKESH ...PETITIONER

Versus

STATE OF PUNJAB ...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parmender Singh, Advocate with
Mr. Ritesh Tomar, Advocate for the petitioner.

Mr. Nitesh Sharma, DAG Punjab.

Harpreet Singh Brar, J. (Oral)

1. The prayer in the present revision petition is to set aside the judgment dated 11.02.2025 passed by learned Additional Sessions Judge, Hoshiarpur, vide which judgment of conviction and order on quantum of sentence dated 09.11.2016 passed by learned Sub Divisional Judicial Magistrate, Mukerian have been upheld wherein the petitioner has been convicted under Section 420 read with Section 34 of Indian Penal Code in the case stemming from FIR No. 31 dated 09.03.2011 registered at Police Station Mukerian District Hoshiarpur.

2. The petitioner along with co-accused were sentenced for cheating by way of changing their ATM Cards, as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
420 IPC read with Section 34 IPC	Rigorous imprisonment 03 years	Rs. 2,500/-	Further simple imprisonment for one months

3. Learned Counsel for the petitioner submits that he is not assailing the impugned judgment of conviction dated 11.02.2025 passed by learned Additional Sessions Judge, Hoshiarpur on merits and restricts his prayer to



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modification of the order on quantum of sentence dated 09.11.2016 passed by learned Sub Divisional Judicial Magistrate, Mukerian to that of sentence already undergone by the petitioner as he has already undergone a period of 01 year 10 months and 16 days (including remission) out of total sentence of 03 years imposed upon him.

4. Per contra, learned State counsel opposes the prayer of the petitioner on the ground that learned Courts below has passed a well-reasoned judgment based on correct appreciation of evidence available on record. Moreover, the petitioner is also involved in other cases, as such he is not entitled for any relief by this Court.

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the petitioner was convicted for cheating by way of changing their ATMs, attracting the offence under Section 420 read with Section 34 of IPC, for which no minimum punishment has been prescribed. As per his custody certificate, he has already undergone total sentence of 01 year 10 months and 16 days (including remission) out of total sentence of 03 years in the instant case. Moreover, learned counsel for the petitioner has not assailed the judgment of conviction on merits. Rather, he has restricted his prayer only qua modification of order on quantum of sentence. Since there is no minimum punishment prescribed under Sections 420 read with Section 34 of IPC, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to the petitioner is reduced to the period already undergone by him.

6. 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

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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.

7. 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.

8. Further, the primary consideration in matters where the petitioner/appellant is involved in other NDPS cases ought to be the severity of the offence. Moreover, Co-ordinate benches of this Court have deemed it appropriate to reduce the sentence imposed upon the accused to be the custody already undergone by them, in spite of their involvement in other cases pertaining to the NDPS Act in ***Pritam Singh @ Preeti vs. State of Punjab*** in ***CRA-S-1769-SB-2010*** decided on 03.04.2025, ***Ram Lal vs. State of Haryana*** in ***CRA-S-986-SB-2005*** decided on



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11.05.2018, Raj Pal vs. State of Haryana in CRA-S-68-SB-2005 decided on 28.04.2023, Raj Pal vs. State of Haryana in CRA-S-34-SB-2005 decided on 28.04.2023 and Gurmail Singh and others vs. State of Punjab in CRA-S-1976-SB-2007 decided on 28.03.2025.

9. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the said judgment is based on correct appreciation of evidence available on record. However, the FIR (supra) was lodged on 09.03.2011 and the petitioner has been suffering the agony of trial for last more than 14 years. Since his conviction, he has grown into a law-abiding citizen and desires to live a peaceful life.

10. Therefore, in view of the discussion above, the present revision petition is disposed of in the following terms:-

(i) The judgment dated 11.02.2025 passed by learned Additional Sessions Judge, Hoshiarpur is upheld.

(ii) The order of sentence dated 09.11.2016 passed by learned Sub Divisional Judicial Magistrate, Mukerian is modified to the extent that the sentence of rigorous imprisonment for 03 years along with total fine of Rs. 2,500/- with default mechanism awarded to the petitioner is reduced to the period of sentence already undergone by him.

11. The petitioner be released from custody forthwith, if his custody is not required in any other case.

12. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

15.05.2025

Ajay Goswami

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*