

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRR-1961-2009 (O&M)**Date of Decision : May 20, 2025****Subhash Chand****. . . . Petitioner****Vs.****STATE OF HARYANA****. . . . Respondent**

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Gautam Dutt, Advocate, for the petitioner.

Mr. R.K.S. Brar, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

Petitioner - Subhash Chand along with one Hem Raj was tried by learned Chief Judicial Magistrate, Faridabad in a complaint filed by Government Food Inspector, Faridabad, under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred as 'the PFA Act') on the allegation that petitioner was found in possession of 10 sealed tins of mustered oil of 16 liters each packed by Lala Gurdial Mal Memorial Oil Mills run by M/s Chiranji Lal Hem Raj Dhauj Wale, Ballabgarh, on 23.12.1999, for public sale. Samples were drawn after making necessary statutory compliance and on analysis, the same was found to be unfit for human consumption.

2. After trial, though accused - Hem Raj was acquitted of the charges, but the petitioner was held guilty and so, convicted for committing offence under Section 7 read with Section 16 of the PFA Act vide judgment dated 13.05.2008. Vide a separate order dated 15.05.2008, he was sentenced to undergo simple imprisonment for a period of 06 months and to

pay a fine of ₹1,000/- for committing offence under the aforesaid Section with default sentence of simple imprisonment of 02 months in case of non-payment of fine. Appeal filed by the petitioner against this conviction and sentence was dismissed by learned Addl. Sessions Judge, Faridabad on 27.07.2009.

3. Against the aforesaid orders, present revision petition has been filed.

4. Before this Court, learned counsel for the petitioner submits that he does not dispute the conviction of the petitioner as recorded by the trial Court and maintained by the Appellate Court and withdraws the petition against conviction. However, he makes a prayer for either releasing the petitioner on probation, or to sentence him for the period already undergone by him.

5. It is pointed out by learned counsel for the petitioner that at the time of recording conviction way back in 2008, the age of the petitioner was 47 years and that by now, he is 64 years of age. It is also the contention that sentence of the petitioner was suspended by this Court in September, 2009 and after such a long time, it will not be in the interest of justice to send him behind bars, particularly, when he is not involved in any other case.

6. Learned State counsel has opposed the prayer made by learned counsel for the petitioner, either to release the petitioner on probation or to sentence him for the period already undergone by him by contending that minimum sentence of 06 months is prescribed in such like cases and that Section 20AA of the PFA Act prohibits releasing of an accused found guilty of an offence committed under the PFA Act on probation.

7. This Court has considered submissions of both the sides and have appraised the record carefully.

8. In view of the statement made by learned counsel for the petitioner, present petition against conviction is hereby dismissed as withdrawn.

9. Coming to the order of sentence, a similar situation had arisen before this Court in CRR No.43 of 2010 titled as "**Aditya Kumar v. State of Haryana**", decided on 03.04.2025, wherein also prayer was made by the petitioner to sentence him for the period already undergone by him, which was less than minimum sentence; whereas the prayer was opposed by learned State counsel on similar grounds. In that case, the petitioner has been convicted in October 2007 for an offence committed in September, 1999 and had been sentenced for minimum period of 03 months rigorous imprisonment and fine of ₹500/-. His conviction recorded in October, 2007 was maintained by the Appellate Court in January, 2010 and the sentence was suspended by this Court in January, 2010 itself and it was thus found that he was out on bail for the last more than 15 years.

10. It was observed by this court in **Aditya Kumar (supra)** as under:

"19. As far as the impugned order of sentence is concerned, the accused-petitioner has been sentenced to undergo the minimum sentence as provided under the Statute i.e. rigorous imprisonment for a period of three months and fine of ₹500/- with default sentence of one month.

20. As per the custody certificate, petitioner has already undergone the actual custody period of seven days and he is not involved in any other offence. It is also noticed by this Court that offence in question was committed in September, 1999 and after a protracted trial of more than 8 years, he was ultimately convicted in October 2007 and then his appeal was dismissed by the Appellate Court in January 2010. The sentence of the petitioner was suspended by this Court in January 2010 and this way, he is out on bail for the last more than 15 years.

21. In the above circumstances, whether it will be justifiable to send him behind bars to carry out the remaining sentence; or can he be released on probation; or whether sentence can be reduced for the period already undergone by him?

22. As per Section 20AA of the PFA Act , the provisions of Probation of Offenders Act 1958, or Section 360 of the Code of Criminal

Procedure are not applicable to a person convicted of an offence under the provision of the PFA Act, unless that person is under the 18 years of age.

23. In this case, at the time of recording conviction in 2007, the age of the petitioner is mentioned to be 36 years as per the custody certificate, which means that at the time of committing the offence, he was 27 years of age and not less than 18 years of age. As such, he cannot be granted benefit of probation in view of Section 20AA of the PFA Act.

24. Although, in ***Ishar Dass Vs. State of Punjab, 1972 PLR 475***, it was held by Hon'ble Supreme court that provisions of Probation of Offenders Act, 1958 are not excluded in the case of person found guilty of offence under the PFA Act, but it is important to notice that Section 20AA was inserted in PFA Act, 1958 by way of an amendment in 1976 and therefore, the case of ***Ishar Dass (supra)*** is not applicable in the present case.

25.1 In yet another case titled ***State of Punjab Vs. Mithu Singh, 1988 (3) SCC 607***, it was held by Hon'ble Supreme Court that Section 20AA of the PFA Act applies also to the offences committed prior to its enactment.

25.2 In the present case, since the offence was committed in 1999; whereas, the amendment by inserting Section 20AA was brought in 1976, as such this authority is also of no help to the case of the petitioner so as to give him the benefit of probation.

26. In ***Joginder Singh Vs. State of Punjab, 1980 PLR 585***, a Full bench of this Court held that benefit of provisions of the Probation of Offenders Act, 1958 can be extended even in a case, where minimum sentence is provided. However, in that case before this Court, the accused had been convicted for the offence under Section 61 of the Punjab Excise Act, 1914. That was not a case committed under the provisions of the PFA Act and so, not applicable to the facts of present case.

27. In ***Lakhvir Singh etc. Vs. The State of Punjab and another, 2021 AIR (Supreme Court) 555***, benefit of probation was extended in a case, where minimum sentence was provided. However, that was the case

under the provisions of Indian Penal Code. Similarly in **Tarak Nath Keshari Vs. State of West Bengal, 2023 SCC Online SC 605**, the benefit of probation was granted despite the fact that minimum sentence of imprisonment was provided, but that was the case under the provisions of Essential Commodities Act, 1955. Thus, in none of these cases, the provisions of the PFA Act were applicable.

28. In **State of Haryana Vs. Yad Ram 1987(1) RCR (Criminal) 264**, a Full Bench of this Court has held that when conviction is recorded under the Prevention of Food Adulteration Act, then the minimum sentence provided in the provision cannot be further scaled down.

29. Thus, from the legal position as above, it emerges that when a conviction is recorded under the provisions of PFA Act, neither the accused can be granted the benefit of Probation of Offenders Act, 1958 nor he can be sentenced to the period of imprisonment lesser than as provided in the Act.

30. However, in the case of **Yad Ram (Supra)**, the effect of Article 21 of the Constitution of India was not discussed, providing for speedy trial.

31. It cannot be disputed that right to speedy and expeditious trial is one of the most valuable and cherished right guaranteed under the Constitution. Article 21 of the Constitution of India takes in its sweep the right to expeditious and fair trial. Even Article 39A of the Constitution of India recognizes the right of citizens to equal justice and free legal aid. To put it simply, it is the constitutional duty of the Government to provide the citizens of the country with such judicial infrastructure and means of access of justice so that every person is able to receive an expeditious, inexpensive and fair trial.

32. Though our Constitution does not expressly declare the right to speedy trial as a fundamental right, but the said right was recognized in **Hussainara Khatoon & Ors. Vs. Home Secretary, State of Bihar (1980) 1 SCC 81**, wherein it was held by Hon'ble Supreme Court that speedy trial is implicit in the broad sweep and content of Article 21 of the Constitution of India. Subsequently, in the series of judgments, Hon'ble Supreme Court

has held that a reasonably expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. Hon'ble Supreme Court has gone to the extent that speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitute denial of justice.

33. Speaking about the need of speedy trial, the Constitutional Bench of Hon'ble Supreme Court in ***Kartar Singh Vs. State of Punjab, (1994) 3 SCC 569*** has observed as under: -

“The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.”

34. As has been observed in the case of ***Hussainara Khatoon & Ors (supra)***, no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21.

35. It has been reiterated by Hon'ble Supreme Court in ***Mahendra Lal Dass Vs. State of Bihar (2002) 1 SCC 149*** that right to speedy trial encompasses all the stages, namely, stages of investigation, inquiry, trial, appeal, revision and re-trial. Each case has to be decided on its own merits. As has been held in ***P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578***, it must be left to the judicious discretion of the Court seized of an individual case to find out from the totality of the circumstances of the case, if the time consumed up to a given point of time amounted to violation of Article 21. In ***State vs. Narayan Waman Nerurkar (2002) 7 SCC 6***, Hon'ble Supreme Court held that while considering the question of delay, the Court has a duty to see whether the prolongation

was on account of any delay in tactics adopted by the accused and other relevant aspects, which contributed to the delay. There cannot be any empirical formula of universal application in such matters.

36. In ***Chander Bhan Vs. State of Haryana, (1996) 1 RCR (Crl) 125***, it has been observed by a Coordinate bench of this Court as under: -

“8. Now it cannot be disputed that the right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. Fundamental rights were not a teasing illusions to be mocked at. These were meant to be enforced and made a reality. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any-the-less the right of the accused. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. This is how the Court shall understand this right and have gone to the extent of quashing the prosecution after such inordinate delay in concluding the trial of an accused keeping in view the facts and circumstances of the case. Keeping a person in suspended animation for 10 years or more without any case at all cannot be within the spirit of the procedure established by law. It is correct that although minimum sentence to be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof qua the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony, which he undergoes on account of protracted trial due to the fault of the prosecution by this Court in the exercise of its extraordinary jurisdiction.

9. An identical question had arisen before the apex Court in ***Braham Dass v. State of Himachal Pradesh (1988) 2 FAC 13***; wherein their Lordships were pleased to observe as under:-

"Coming to the question of sentence, we find that the appellant had been acquitted by the trial Court and High Court while reversing the judgment of acquittal made by the appellate judge has not made clear reference to Clause (f). The occurrence took

place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act, the Court should take strict view of such matter."

10. This view was followed by this Court in ***Nand Lal v. State of Haryana (1992) 1 Rec. Cri R. 82*** and ***Ishwar Singh v. State of Haryana 1994(1) RCR 160***. The present case is fully covered by the view expressed by the Apex Court and by this Court in the judgments cited above and I have no reason to differ therewith.

11. For the reasons mentioned above, the conviction of the petitioner for an offence under Section 16(1)(a)(i) read with Section 7 of the Act is hereby maintained. However, keeping in view the facts and circumstances of the case and the fact that the petitioner has already faced the agony of the protracted prosecution and suffered mental harassment for a long period of ten years, his sentence is reduced to the period of sentence already undergone. Sentence of fine is, however maintained along with its default clause."

37. Another Coordinate Bench of this Court has taken the similar view in ***Vikas Mehta Vs. State of Haryana, Law Finder doc ID #2041916*** by placing reliance upon ***Des Raj Vs. State of Haryana, 1996(1) RCR (Criminal) 689***.

38. Keeping in mind the abovesaid legal principles, when facts and circumstance of the present case are examined, it is noted that petitioner faced protracted trial from 1999 till 2007, when he was ultimately convicted by the trial Court. There is nothing on record to indicate that there was any attempt on the part of the accused-petitioner to delay the trial. His appeal was dismissed in 2010. After the present Criminal Revision was admitted by this Court in 2010, because of the huge pendency, the file could not be listed for final hearing and when it has now

been listed for final hearing in 2025, it is almost more than 15 years from the date of its admission.

39. Thus, the sword of conviction kept on hanging on the head of the petitioner for the last 26 years. It is easy to say that for almost all the time, the petitioner was on bail, but one cannot imagine the agony & trauma, which is faced by such a person, whose conviction has been recorded by the Court. The Court also cannot ignore the age factor, inasmuch as at the time when the offence was committed in 1999, petitioner was hardly 27 years of age. Now, after passing of the 26 years, he is 53 years of age and so, sending him behind bars at this stage to undergo the remainder of the sentence, will not be in the interest of justice.

40. Keeping in mind all the aforesaid circumstances, this Court is not inclined to direct the petitioner to undergo remainder of the sentence. Rather, the impugned order of sentence as passed by the trial Court and affirmed by the Appellate Court, is hereby modified. The sentence of the petitioner is reduced to the period already undergone by him. However, the sentence of fine as imposed upon the petitioner is increased from ₹500/- to ₹10000/-, which is required to be deposited by him before Ld. CJM, Hisar, within a period of 4 weeks from the date of receipt of the certified copy of the instant order. It is made clear that in case the enhanced fine is not deposited within the aforesaid period of four weeks as per this order, the present order reducing the sentence of the petitioner to the period already undergone, shall automatically stand vacated and in that eventuality, petitioner will have to undergo the actual sentence of 3 months apart from the sentence of default imposed by Ld. Chief Judicial Magistrate, Hisar.”

11. Facts of the present case are similar to the above cited case, because in this case also petitioner has been sentenced for a minimum sentence of 06 months. As per the custody certificate, petitioner has already undergone the total custody period of 01 month 09 days and he is not involved in any other offence. It is also noticed by this Court that offence in question was committed in December, 1999 and after a protracted trial of

more than 8 years, he was ultimately convicted in May, 2008 and then his appeal was dismissed by the Appellate Court in July, 2009. The sentence of the petitioner was suspended by this Court in September, 2009 and this way, he is out on bail for the last more than 15 years.

12. Keeping in mind all the aforesaid circumstances, this Court is not inclined to direct the petitioner to undergo remainder of the sentence. Rather, the impugned order of sentence as passed by the trial Court and affirmed by the Appellate Court, is hereby modified. The sentence of the petitioner is reduced to the period already undergone by him. However, the sentence of fine as imposed upon the petitioner is increased from ₹1,000/- to ₹20,000/-, which is required to be deposited by him before learned Chief Judicial Magistrate concerned within a period of 04 weeks from the date of receipt of the certified copy of the instant order. It is made clear that in case the enhanced fine is not deposited within the aforesaid period of four weeks as per this order, the present order reducing the sentence of the petitioner to the period already undergone, shall automatically stand vacated and in that eventuality, petitioner will have to undergo the actual sentence of 06 months apart from the sentence of default imposed by learned Chief Judicial Magistrate, Faridabad.

The present Criminal Revision stands disposed of accordingly.

May 20, 2025
sarita

(DEEPAK GUPTA)
JUDGE

Whether speaking/reasoned?
Whether reportable?

Yes/No
Yes/No