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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2279-2010
Date of decision: 02.04.2025

Jagvir KumarPetitioner

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.P.S. Sidhu, Advocate and Ms. Nikita Gill, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition is preferred against judgment dated 10.08.2010 passed by learned Additional Sessions Judge, whereby appeal against judgement of conviction and order of sentence dated 04.04.2008 passed learned Judicial Magistrate, Faridkot in complaint dated 28.09.2005 registered under section 27(b)(ii) and 28 of the Drugs and Cosmetic Act, 1940 (hereinafter referred to as Act) read with Section 18(c) and 18-A respectively of the Act, was dismissed.

2. After assessing all material on record, the learned Trial Court convicted and sentenced the petitioner as follows:

Offence Under Section	Sentence
27(b)(ii) of Drugs & Cosmetics Act	Rigorous imprisonment for a term of one year and fine of Rs. 5000/- each, in default to undergo R.I of 2 month
28 of Drugs and Cosmetics Act	Rigorous imprisonment for a term of three months

It was ordered that all sentences shall run concurrently.



3. Succinctly, the facts of the case are that on 13.11.2002, a raid was conducted at the petitioner's shop by the then Drug Inspector, Faridkot. During the raid it was discovered, that the petitioner was stocking allopathic medicines for sale without possessing a valid license. Consequently, the drugs were seized on the spot, the necessary seizure memos were prepared, and the present complaint was instituted.

4. Learned counsel for the petitioner contends that the whole case is based on the testimony of the complainant and there is no corroboration for the same. Further, there is material on record which reflects the medicines recovered, were meant for sale. Furthermore, the learned court below wrongly relied upon the sanction, as that the same was obtained against the firm and not the petitioner. Lastly, the learned lower court has wrongly denied the benefit of probation to the petitioner, even though he has been facing agony of present case from the year 2005.

5. *Per contra*, learned State counsel opposes the prayer made by learned counsel for the petitioner and submits that the petitioner has been convicted by the learned trial Court based on correct appreciation of the facts and the law. Moreover, the conviction has been upheld by the learned lower Appellate Court, as such interference by this Court is not warranted.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner has been facing the trial for more than 19 years.

7. Sections 3 and 4 of the Probation of Offenders Act, 1958 (hereinafter to be referred to as 'the Act') empowers the Courts to release the convicts if deemed appropriate in view of circumstances of the case. Similarly, Sections 360 and 361 of the Cr.P.C also allows the Courts to release convicts on



probation for good conduct in the cases and circumstances mentioned therein. A two Judge Bench of the Hon'ble Supreme Court in ***Som Dutt and others Vs. State of Himachal Pradesh (2022) 6 SCC 722*** speaking through Justice Bela M. Trivedi, has held as under:-

“6. ...having regard to the fact there are no criminal antecedents against the appellants, the court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the appellants, it is directed that the appellants shall be released on probation of good conduct.....”

A two Judge Bench of the Hon'ble Supreme Court in ***Lakhvir Singh Vs. State of Punjab (2021) 2 SCC 763*** speaking through Justice Sanjay Kishan Kaul, has held as under:-

“6. We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved.”

Further still, a two Judge Bench of the Hon'ble Supreme Court in ***Lakahn Singh vs. State of Madhya Pradesh (2021) 6 SCC 100*** has opined as follows:

“15. We find that the attention of the Court was not drawn to sub-section (10) of Section 360 which provides that Section 360 will not affect the provisions of 1958 Act or other similar laws for the time being in force for the treatment, training or rehabilitation of youthful offenders. Still further, Section 4 of the 1958 Act has a non obstante clause, giving overriding effect over any other provisions of law.

16. The conjoint reading of the provisions of both the statutes, we find that the provisions of Section 360 of the Code are in addition to the provisions of the 1958 Act or the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders”



8. Hon'ble High Court of Punjab & Haryana in **Vijay Kumar Jindal v. State of Punjab, (P&H) Criminal Revision No.591 of 1989** decided on 14.01.2004, speaking through **Justice Virender Singh** has held as under:-

'8. Admittedly, it is not the case of the prosecution at all that allopathic medicines, which were found in the possession of the petitioner were spurious or adulterated. The petitioner is otherwise having a letter of Board of Ayurvedic and Unani System of Medicines, Jaipur. As per the allegations, he could not practise in allopathic. I am of the view that the judgment rendered in Surinder Kumar Verma's case (supra) squarely covers the case of the present petitioner for the purpose of benefit of probation and I do not find any reason as to why this prayer should not be allowed. In both the above said cases, it has been observed by this Court that no doubt the minimum punishment has been provided in the Act for the offence committed by the petitioner but it cannot be considered a bar to refuse the benefit of probation. In Surinder Kumar Verma's case (supra), this Court has relied upon the Full Bench judgment of this Court rendered in Joginder Singh's case (supra). In the said case also the drugs were not found spurious or adulterated. The recovery was effected in 1983 and keeping in view all the facts and circumstances of the case, the petitioner was granted the benefit of probation. In my considered view, the present petitioner also deserves the same relief.'

9. The Hon'ble Supreme Court in **Bishnu Deo Shah Vs. State of West Banal AIR 1979 SC 964** has laid down that it is obligatory on the part of the Court to deal with a convict under the provisions of Section 360 of the Cr.P.C., if he is not convicted for an offence punishable with death penalty or imprisonment for life and additionally, if he is not a previous convict. The overarching object of the provision contained in Section 4 and 6 of the Act and Section 360 and 361 of Cr.P.C. is to provide an opportunity to the first-time offenders to reform and not expose them in association with the hardened and habitual criminal inmates incarcerated in the judicial custody.



10. In view of the facts and circumstances of the case, the instant revision petition is disposed of, in the following terms:-

1. The judgment dated 10.08.2010 passed by learned Additional Sessions Judge confirming the conviction of the petitioner is upheld.
2. The order of sentence dated 04.04.2008 passed by the learned Chief Judicial Magistrate, Faridkot, is modified to the extent of granting the concession of probation to the petitioner for good conduct.
3. The petitioner shall be released on probation for good conduct on furnishing a personal bond of Rs.10,000/- with a surety for the same amount within four weeks, after furnishing an undertaking to keep the peace and good behaviour for a period of one year to the satisfaction of the concerned trial Court.
4. The petitioner shall remain under the supervision of the concerned Probation Officer during the aforesaid period. If the petitioner fails to comply with the said directions or commit breach of the undertaking rendered by them, he shall be called upon to undergo the sentence imposed upon him by the learned trial Court.

(HARPREET SINGH BRAR)
JUDGE

02.04.2025

Neha

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No