



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

Date of decision: 26.03.2025

1.

CRR-1196-2022 (O & M)

RAJ KUMAR

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

2.

CRR-1197-2022 (O & M)

KRISHAN CHAND

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

3.

CRR-1215-2022 (O & M)

RADHEY SHYAM

...PETITIONER

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Keshav Pratap Singh, Advocate and
Mr. Tarun Hooda, Advocate
for the petitioner in CRR-1196-2022.

Mr. Vishal Singh, Advocate with
Mr. Sanskar Dhanda, Advocate
for the petitioner in CRR-1197-2022.

Mr. D.P.S. Bajwa, Advocate
for the petitioner in CRR-1215-2022.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This order of mine shall dispose of all the above-mentioned petitions as all are arising from the same FIR. For the sake of brevity, facts are borrowed from **CRR-1196-2022** titled as ***Raj Kumar vs. State of Haryana.***



2. The instant petitions have been preferred against the judgment dated 24.05.2022 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri vide which, judgment of conviction dated 07.01.2019 and order of sentence dated 09.01.2019 passed by learned Additional Chief Judicial Magistrate, Yamuna Nagar at Jagadhri have been upheld, in case stemming from FIR No.1248 dated 14.08.2017 registered under Sections 222-A and 223-A of IPC and 42 of Prisons Act, 1894 at Police Station City Jagadhri. The petitioners were sentenced as mentioned below:

Offence under Section(s)	Sentence
222 IPC	RI for 01 year with a fine of Rs.2,000/- each.
224 IPC	RI for two years and a fine of Rs.1,000/- each.

3. Briefly stated, the case of the prosecution is that on 14.8.2017, a written complaint bearing no.4995 dated 14-8-2017 was received in the police station from District Jail, Jagadhri to the effect that accused Keki, was undergoing imprisonment for a period of five years in District Jail, Jagadhri in a case bearing FIR No.41 dated 28.07.2016 under Section 379-A IPC, PS GRP, Jagadhri and in the night of 13.08.2017, he had escaped from jail. On the basis of this complaint, an FIR (*supra*) was lodged and investigation was swung into motion. During investigation, Raj Kumar, Deputy Assistant Superintendent (Jail), Warder Radhey Shyam and Warder Krishan Chand (petitioners herein) were found to have played a role in the flee of accused Keki and accordingly, they were arrayed as accused in the instant case and accordingly arrested. During investigation, accused Keki was also arrested, who suffered disclosure statement implicating accused Sandeep Chaudhary,



who had allegedly helped him to escape from the jail. On the basis of said disclosure statement, accused Sandeep was arrested.

4. After assessing the material available on record, the learned trial Court convicted and sentenced the petitioners vide judgment and order dated 07/09.01.2019. Aggrieved by the same, the petitioners preferred the appeal, before learned lower Appellate Court, which was also dismissed.

5. Learned counsel for the petitioners *inter alia* contend that story of the prosecution is highly improbable and does not inspire confidence on material aspects of the case i.e. time, place and manner of occurrence and the petitioners have been falsely implicated in the present case. They further submit that the petitioners were not negligent in performing their official duties being public servants. Furthermore, on that day, there was a protest by farmers and 350 farmers were lodged in jail and due to heavy rush in the jail, accused Keki succeeded in fleeing away from the jail. As such, the prosecution has failed to prove its case beyond the shadow of reasonable doubt.

6. *Per contra*, learned State counsel opposes the prayer made by learned counsel for the petitioners and submits that they have been convicted by the learned trial Court based on correct appreciation of the facts and the law, which has also been upheld by learned lower Appellate Court. As such interference by this Court is not warranted.

7. Having heard the learned counsel for the parties and after perusing the record with their able assistance, it transpires that petitioner-Raj Kumar is about 61 years of age, petitioner Krishan Chand is about 40 years of age and petitioner Radhe Sham is about 57 years of age. They all are facing



the agony of protracted trial for the last more than 7 years. Since their conviction, the petitioners have grown into law-abiding citizens and desire to live a peaceful life.

8. Sections 3 and 4 of the Probation of Offenders Act, 1958 empower the courts to release the offenders on probation of 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 ***Lakahnlal @ 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”

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 appeals are disposed of in the following terms:-

- 1) The judgment dated 24.05.2022 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri confirming the conviction of the petitioners is upheld.
- 2) The order of sentence dated 09.01.2019 passed by learned Additional Chief Judicial Magistrate, Yamuna Nagar at Jagadhri, is modified to the extent of granting the concession of probation to the petitioners for good conduct.
- 3) The petitioners shall be released on probation for good conduct on furnishing a personal bond of Rs.10,000/- each 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 petitioners shall remain under the supervision of the concerned Probation Officer during the aforesaid period. If the petitioners fail to comply with the said directions or commit breach of the undertaking rendered by them, they shall be called upon to undergo the sentence imposed upon them by the learned trial Court.

11. Needless to say in view of the Section 12 of Probation of Offenders Act, judgment of conviction and order of sentence dated 07/09.01.2019 passed by learned Additional Chief Judicial Magistrate, Yamuna Nagar at Jagadhri, which have been upheld by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri vide judgment dated 24.05.2022, shall not be a hurdle to petitioners, in any way, to get retiral benefits and other service benefits to which they are entitled to.

12. A photocopy of this order be placed on the file of other connected case.

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

March 26, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |