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

+ CRL.A. 26/2025 & CRL.M.A. 567/2025

AVINASH

.....Appellant

Through: Mr. Anil Sharma, Advocate.  
versus

THE STATE OF N.C.T DELHI

.....Respondent

Through: Mr. Mukesh Kumar, APP.  
SI Shah Faisal, P.S. New Ashok  
Nagar.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER**

**19.08.2025**

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1. The Appellant, Avinash, along with co-accused Karan, is a convict in Sessions Case No. 134/2020 arising from FIR No. 32/2020, registered at P.S. New Ashok Nagar, Delhi. The Appellant, *vide* judgment dated 11<sup>th</sup> September, 2024, passed by the Principal District and Sessions Judge, East District, Karkardooma Courts, Delhi, was convicted for the offences punishable under Sections 392 and 34 of the Indian Penal Code, 1860<sup>1</sup>. By sentencing order dated 8<sup>th</sup> November, 2024, he was sentenced to undergo rigorous imprisonment for a period of 4 years with a fine of INR 10,000/-, and in default, simple imprisonment for a further period of 3 months.
2. The Appellant, by way of the present appeal, challenges the aforesaid conviction judgment dated and the sentencing order. However, during the course of these proceedings, counsel for the Appellant submitted that without pressing the appeal on merits insofar as the conviction under

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<sup>1</sup> "IPC"



Sections 392 and 34 of IPC is concerned, the Appellant may be considered for grant of benefit of probation of good conduct. In this regard, the Appellant has filed an application under Section 401 of the Bharatiya Nagarik Suraksha Sanhita, 2023<sup>2</sup> (corresponding to Section 360 of the Code of Criminal Procedure, 1973<sup>3</sup>) read with Section 4 of the Probation of Offenders Act, 1958<sup>4</sup>.

3. For a proper consideration of the limited prayer as aforesaid, the facts as recorded by the Trial Court may be noticed in brief. On 13<sup>th</sup> January, 2020, at about 9:00 PM, the Appellant and co-accused Karan committed robbery of a Samsung mobile phone and INR 70/- from the Complainant, Vishal Nath Rajdev Pandey. The co-accused Karan was armed with a button-actuated knife, and the robbed articles were recovered from the Appellant. Both were apprehended shortly thereafter near Sanchar Apartment, Vasundhara. Upon completion of investigation, charges under Sections 392, 397, 411 and 34 of IPC were framed against the Appellant. Eventually, the Appellant was convicted under Sections 392 and 34 of IPC.

4. Subsequently, by order dated 6<sup>th</sup> May, 2025, the sentence of the Appellant was suspended by this Court. Thereafter, pursuant to directions passed by this Court on 25<sup>th</sup> March, 2025, a Probation Report/Social Investigation Report was received from the Probation Officer.

5. The Report indicates that the Appellant is a 23-year-old married man, residing with his parents, wife, siblings, and three minor children at Jhuggi No. 21/619, Indira Camp, Kalyanpuri, Delhi. Prior to his arrest, he was employed as an e-rickshaw driver and earned about INR 10,000/- per month.

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<sup>2</sup> “BNSS”

<sup>3</sup> “CrPC”



The Report further records that neighbours described him as a person of good conduct and behaviour, and no previous criminal antecedents are reported.

6. Counsel for the Appellant submits that the Appellant is a first-time offender and has already undergone a substantial period of custody. He submits that although there are allegations regarding the usage of a button-actuated knife at the time of the incident, however the same has not been recovered from the possession of the Appellant. In these circumstances, a lenient view may be taken. It is further submitted that the Appellant has deep roots in society and undertakes to maintain peace and good behaviour in the future. In light of the foregoing, counsel for the Appellant prays that the sentence awarded to the Appellant may be modified by extending him the benefit of probation.

7. Heard. Since the counsel for Appellant restricted arguments only to the question of grant of benefit of probation, this Court shall not go into the merits of the case insofar as the conviction of the Appellant under Sections 392 and 34 of IPC is concerned. The limited issue for consideration before this Court is whether the Appellant is entitled to the benefit of probation as envisaged under the Probation Act.

8. The purpose of the Probation Act has been emphasized by the Supreme Court in ***Lakhvir Singh v. State of Punjab***<sup>5</sup>, wherein it was observed:

*“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,***

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<sup>4</sup> “Probation Act”

<sup>5</sup> (2021) 2 SCC 763.



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.”

[Emphasis Supplied]

9. Section 4 of the Probation Act empowers the Court to release an offender, found guilty of an offence not punishable with death or imprisonment for life, on probation of good conduct, if the Court is of the opinion that, having regard to the circumstances of the case, the nature of the offence and the character of the offender, such release would be expedient. The meaning and scope of the term “*expedient*” has been explained by the Supreme Court in ***Dalbir Singh v. State of Haryana***<sup>6</sup>, as under:

*“10. ...Here the word “expedient” is used in Section 4 of the PO Act in the context of casting a duty on the court to take into account “the circumstances of the case including the nature of the offence...”. This means Section 4 can be resorted to when the court considers the circumstances of the case, particularly the nature of the offence, and the court forms its opinion that it is suitable and appropriate for accomplishing a specified object that the offender can be released on probation of good conduct.”*

[Emphasis Supplied]

10. It is now well settled that once the circumstances envisaged under Section 4 of the Probation Act are attracted, the Court has no discretion to omit consideration of releasing the offender on probation. Rather, a mandatory duty is cast upon the Court to examine whether probation ought to be extended in the facts of the case. In ***Chellammal & Anr. v. State represented by the Inspector of Police***<sup>7</sup>, the Supreme Court underscored the principle in the following terms:

*“Summing up the legal position, it can be said that while an offender*

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<sup>6</sup> (2000) 5 SCC 82.

<sup>7</sup> 2025 SCC OnLine SC 870.



*cannot seek an order for grant of probation as a matter of right but having noticed the object that the statutory provisions seek to achieve by grant of probation and the several decisions of this Court on the point of applicability of Section 4 of the Probation Act, **we hold that, unless applicability is excluded, in a case where the circumstances stated in subsection (1) of Section 4 of the Probation Act are attracted, the court has no discretion to omit from its consideration release of the offender on probation; on the contrary, a mandatory duty is cast upon the court to consider whether the case before it warrants releasing the offender upon fulfilment of the stated circumstances.** The question of grant of probation could be decided either way. In the event, the court in its discretion decides to extend the benefit of probation, it may upon considering the report of the probation officer impose such conditions as deemed just and proper. However, if the answer be in the negative, it would only be just and proper for the court to record the reasons therefor.”*

[Emphasis Supplied]

11. The Appellant is a young individual of 23 years, having clean antecedents and burdened with family responsibilities, including three minor children. The Probation Report/Social Investigation Report as well as the Nominal Roll confirm his satisfactory conduct. As per Nominal Roll as on 19<sup>th</sup> March, 2025, the Appellant has already undergone a period of incarceration of 7 months and 20 days, while earning remission for a period of 1 month and 9 days. His unexpired portion of sentence, thus, remains about 3 years, and his overall jail conduct has been found to be satisfactory.

12. Having regard to the facts and circumstances of the case, including the period of custody already undergone by the Appellant, the nature of the offence, and considering the possibility of his reformation, this Court is of the opinion that that Appellant can be granted the benefit of probation in terms of Section 4 of the Probation Act.

13. Accordingly, while maintaining the conviction of the Appellant under Sections 392 and 34 of IPC, the sentence awarded *vide* order dated 8<sup>th</sup>



November, 2024 is modified to the extent that the Appellant shall be released on probation on furnishing a bond in the sum of INR 25,000/- with one surety of like amount to the satisfaction of the Trial Court, within a period of three weeks from today, for keeping peace and good behaviour.

14. The Appellant shall remain under the supervision of the Probation Officer concerned for a period of one year and, during this period, he shall report before the Probation Officer once every month.

15. It is made clear that in the event of any breach of the conditions of probation or involvement in any other offence during this period, the benefit granted under this order shall stand revoked, and the Appellant shall be liable to undergo the remaining portion of the substantive sentence as awarded by the Trial Court.

16. This Court, while passing this order, has also borne in mind that the Appellant has undergone the ordeal of a protracted criminal trial spanning over five years since the registration of the FIR in 2020. During this period, he remained in judicial custody for a significant duration, and has demonstrated satisfactory conduct throughout. It is further relevant to note that no other criminal case has been registered against him since then, which indicates a genuine effort and intent of reformation. The Probation Report, as well as the Nominal Roll, reflect that the Appellant is actively taking steps to rehabilitate back into the society and fulfil his familial duties, including towards his three minor children. Taking these factors into account, this Court finds it appropriate to extend to him the benefit of probation, in keeping with the reformatory objectives of the Probation Act.

17. Since the present appeal has not been pressed on merits with respect to the conviction, this Court has not interfered with the findings of



conviction recorded by the Trial Court in its judgment dated 11<sup>th</sup> September, 2024.

18. Accordingly, the appeal stands disposed of in the above terms. Pending applications, if any, also stand disposed of.

19. Let a copy of this order be forwarded to the Trial Court for necessary information and compliance.

20. The Registry is directed to keep the Probation Report/Social Investigation Report in a sealed cover.

**SANJEEV NARULA, J**

**AUGUST 19, 2025/as**