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

+ **CRL.A. 245/2018**

HIMANSHU @ HAPPY

.....Appellant

Through: Ms. Tanya Aggarwal, Advocate with
appellant in person.

versus

THE STATE GOVT OF NCT OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

22.11.2025

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1. By way of the present appeal under Section 374(2) Cr.P.C., the appellant seeks to assail the judgment of conviction dated 14.12.2017 and the order on sentence dated 21.12.2017, passed by the learned Additional Sessions Judge-04 (North-West), Rohini Courts, Delhi, in S.C. No. 201/2011, arising out of FIR No. 239/2010, registered at P.S. Mukherjee Nagar, whereby the appellant was convicted for the offences punishable under Sections 328, 411 and 174A of the IPC.

2. Vide the impugned order on sentence, the appellant was sentenced to undergo Rigorous Imprisonment for three years and six months with a fine of Rs.10,000/- for the offence under Section 328 IPC, in default whereof he was directed to undergo six months simple imprisonment. For the offence under Section 411 IPC, he was sentenced to undergo Rigorous Imprisonment for two years and a fine of Rs.5,000/-, in default whereof he was to undergo three months simple imprisonment. For the offence under Section 174A IPC, he was sentenced to Rigorous Imprisonment for two



years and a fine of Rs.5,000/-, in default whereof he was to undergo three months simple imprisonment. All sentences were directed to run concurrently, and the benefit under Section 428 Cr.P.C. was extended to him.

3. Subsequently, the sentence of the appellant was suspended by this Court vide order dated 02.05.2019.

4. Briefly stated, the case of the prosecution was that on 28.06.2010, around 10:30 a.m., at MCD colony, Park Dhaka Gaon, within the jurisdiction of P.S. Mukherjee Nagar, the appellant administered a stupefying substance to one Sarfraj by lacing biscuits with lorazepam, thereby rendering him unconscious, and removed a sum of Rs.13,000/- and a mobile phone from his possession. The appellant was apprehended at the spot by public witnesses and handed over to the police. During investigation, the alleged stolen property and biscuit pieces along with a vial containing residue were recovered from his possession.

5. During trial, the prosecution examined thirteen witnesses, including the complainant Ranjeet Singh, eyewitness Rajat, and the victim Sarfraj, all of whom supported the prosecution version. The FSL report confirmed the presence of lorazepam in the gastric lavage. The appellant, in his statement under Section 313 Cr.P.C., denied the allegations and claimed false implication. No defence evidence was led to substantiate his plea.

6. Upon appreciation of evidence, the Trial Court found the testimonies of the victim and public witnesses cogent, consistent and reliable. The medical and forensic evidence further strengthened the prosecution case. The defence raised by the appellant was found to be unsubstantiated. The



Trial Court, accordingly, convicted the appellant under Sections 328, 411 and 174A IPC.

7. On a perusal of the record, including the testimonies of the public witnesses and the victim, which clearly establish the identity of the appellant and his role in the commission of the offences, this Court finds no infirmity in the reasoning adopted by the learned Trial Court. The conviction of the appellant under Sections 328, 411 and 174A IPC is therefore upheld.

8. The appellant is present through VC and is duly identified by the Investigating Officer. Learned counsel for the appellant, on instructions, submits that the appellant does not wish to press the appeal on merits and confines his prayer to seeking modification of the sentence to the period already undergone. It is submitted that the appellant comes from an economically weak background, is a 43-year-old Rapido driver, and is the sole breadwinner for his family comprising his old age parents. A request is also made for reduction of the fine amount in view of the appellant's financial hardship.

9. Learned APP for the State has handed over a status report, which is taken on record. As per the said report, the appellant has no other criminal involvement apart from the present case.

10. As per the nominal roll, the appellant has undergone about 2 years and 2 months of custody including remission earned, and currently has no other involvement. It is further recorded that the fine amount has not been paid.



11. The law with regard to release of the appellant in cases where the convict has undergone more than half of the sentence was laid down by the Supreme Court in Sonadhar v. State of Chhattisgarh decided on 06.10.2021, in **SLP (CRL)No. 529/2021** the relevant portion of the same is extracted hereinafter:

'We thus issue the following directions:

a) A similar exercise be undertaken by the High Court Legal Services Committee of different High Courts so that convicts represented by legal aid Advocates do not suffer due to delay in hearing of the appeals. NALSA will circulate this order to the concerned authority and monitor the exercise to be carried on.

b) The Delhi High Court Legal Services Committee would take up the cases of those convicts who have undergone more than half the sentence in case of fixed term sentences and examine the feasibility of filing bail applications before the High Court, while in case of 'life sentence' cases, such an exercise may be undertaken where eight years of actual custody has been undergone.

c) We are of the view that in fixed term sentence cases, an endeavour be made, at least as a pilot project, in these two High Courts to get in touch with the convicts and find out whether they are willing to accept their infractions and agree to disposal of the appeals on the basis of sentence undergone.

d) A similar exercise can be undertaken even in respect of 'life sentence' cases where the sentenced persons are entitled to remission of the remaining sentence i.e., whether they would still like to contest the appeals or the remission of sentence would be acceptable to such of the convicts.

Our aforesaid additional directions are based on a premise that at times if a convict has actually done of what he is accused of and he is remorseful, he may be willing to accept his acts and suffer a lesser sentence. We make it clear that the objective is not to compel or extract acceptance from such convicts depriving of the right of appeal.'

12. Having considered the submissions made by learned counsel for the appellant and the learned APP for the State, as well as the material placed on record, including the nominal roll, this Court notes that the appellant has no previous criminal involvement as confirmed in the status report. The occurrence pertains to the year 2010, and the present appeal has remained pending since 2018. The appellant has already undergone a substantial portion of the sentence and taking into account the overall mitigating circumstances, including the appellant's age, socio-economic background



and financial condition, absence of criminal antecedents, and the length of time that has elapsed since the incident, this Court is of the considered view that the ends of justice would be served by modifying the sentence imposed upon the appellant.

13. Accordingly, while affirming the conviction of the appellant for the offences under Sections 328 IPC, 411 IPC and 174A IPC, the sentence imposed vide order dated 21.12.2017 is modified to the period already undergone by him.

14. The sentence of fine as well as the default sentence is maintained. The appellant is directed to deposit the fine amount which is reduced to Rs. 5,000/-. The appellant is directed to deposit the fine amount within four weeks from today and to furnish proof of such deposit before the IO. In case of default, the appellant shall undergo the default sentence as imposed by the Trial Court.

15. The appeal is partly allowed and accordingly disposed of in the above terms. Pending applications, if any, also stand disposed of.

16. Subject to payment of fine, the bail bonds furnished by the appellant stand cancelled and his sureties are discharged.

17. A copy of this order be sent to the concerned Trial Court and concerned Jail Superintendent for information and compliance.

MANOJ KUMAR OHRI, J

NOVEMBER 22, 2025

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