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

+ CRL.A. 879/2023

AJAY KUMAR @ KANDI

.....Appellant

Through: Mr. Harsh Sharma, Mr. Abhishek
Vashisth and Ms. Kritica, Advs.

versus

THE STATE OF NCT OF DELHI

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State with
SI Dhananjay Gupta, P.S. Kirti Nagar

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+ CRL.A. 994/2023

NEERAJ PANDEY @ CHHIDI

.....Appellant

Through: Mr Gautam Khazanchi, Ms. Anshala
Verma, Ms. Aditi Kukreja, Advs
(DHCLSC)

versus

THE STATE (NCT OF DELHI) THROUGH SHO OF POLICE
STATION KIRTI NAGAR

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State,
with SI Dhananjay Gupta, P.S. Kirti
Nagar

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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14.10.2025

CRL.M.(BAIL) 1462/2023 (suspension of sentence) in CRL.A. 879/2023

1. With the consent of parties, the appeal itself is taken up for hearing, rendering the present application infructuous.
2. The application is disposed of.



CRL.A. 879/2023 & CRL.A. 994/2023

1. The appellants vide the present appeals, filed under Section 374 read with Section 482 of the Code of Criminal Procedure, 1973 seek to challenge the judgment of conviction dated 15.05.2023 and the order on sentence dated 31.07.2023 passed by the learned ASJ-04, West District, Tis Hazari Courts, Delhi in the Session Case No.56299/2016 pertaining to FIR No.312/2014 registered under Sections 397/394/34 of the Indian Penal Code, 1860, at P.S., Kirti Nagar, Delhi.

2. Both the appellants were convicted for the offences under Section 394/34 IPC and sentenced to rigorous imprisonment for a period of 7 years alongwith fine of Rs.15,000/- each. Additionally, the appellant/Ajay was also convicted for the offence under Section 397 IPC and sentenced to 7 years rigorous imprisonment with fine of Rs.10,000/-. In default of payment of fine, the appellants were directed to further undergo 3 months simple imprisonment. All the substantive sentences were to run concurrently. The benefit of section 428 Cr.P.C was also given.

The sentence of the appellant/Neeraj was suspended vide order dated 02.12.2024. The appellant Ajay Kumar @ Kandi is still in judicial custody.

3. The prosecution's case against the appellants, as reflected in the deposition of complainant Santosh Kumar (PW1), is that on the intervening night of 10/11.05.2014, the complainant was returning from work on foot around 12:45 A.M., when four boys caught hold of him near metro pillar No. 342. One boy caught him by the neck and dragged him between two vehicles. The second boy put a knife on his abdomen and asked him to handover his



belongings. While the third boy gave beatings and the fourth boy snatched his mobile phone of make Nokia C-2, his purse containing Rs. 260, Metro card, ATM card and cash amount of Rs. 7200/- of his salary which were kept in an envelope. The accused persons started running and he chased after them. Near the Gol Chakkar, Kirti Nagar, two police officials on duty, apprehended them with help of the complainant. PW1 identified the appellants in Court and specifically attributed to appellant/Ajay, the role of putting knife at his abdomen at the time of commission of robbery. He further stated that the envelope containing Rs. 7200/- was in the hands of the appellant/Ajay. He stated that his purse and mobile phone were recovered from the other two accused, who were JCL's. Nothing favourable could be elicited from his cross examination.

4. Ct. Sher Singh, examined as PW6, deposed that on 10.05.2014, he alongwith Ct. Wazir Chand was on patrolling duty when they heard the noise of 'pakdo pakdo' and saw that the complainant was running after four boys who were running ahead of him. They apprehended the four persons, out of which two were the appellants and two were JCL. He deposed that a mobile phone and wallet was recovered from the JCL. They informed the police station and SI Nafe Singh alongwith Ct. Anil reached at the spot. Ct. Wazir Chand, examined as PW2, deposed on similar lines. Both of them correctly identified the appellants in Court.

5. The IO Nafe Singh, examined as PW7, deposed that the knife used in the incident was recovered at the instance of Ajay from underneath one car parked in front of Jatin motor and properties, A Block, Ramesh Nagar. PW4 Ct.



Rajaram Yadav also deposed to similar effect. Nothing favourable to the appellants has come out from the cross examination of any of the witnesses.

6. After completion of prosecution evidence, the statements of both accused were recorded under Section 313 Cr.P.C., wherein they denied all incriminating circumstances and claimed false implication and that they were lifted from their residence. They did not lead any defence evidence.

7. The Trial Court, upon appreciation of the evidence, found that the prosecution had succeeded in proving that both accused, acting in concert alongwith two other JCL's, in furtherance of their common intention, robbed the complainant of his valuables and while committing robbery, voluntarily caused hurt on his person by beating him. It further held proved that the appellant/Ajay used a deadly weapon i.e. Knife by putting it to the abdomen of the complainant while committing robbery.

8. This Court finds no infirmity in the appreciation of evidence by the Trial Court. Considering the clear and categorical testimony of the complainant and PW2 and PW6, the police officials who apprehended the appellants from the spot, all of them identifying the accused correctly, the recovery of knife at the behest of appellant/Ajay and his role of using the knife during robbery, the conviction of both the appellants under Section 394/34 IPC and further conviction of the appellant/Ajay under Section 397 IPC is upheld.

9. Learned counsel for the appellant/Ajay, on instructions from the appellant, who has joined the proceedings from CJ-8/9 through Head Warden Umesh Dahiya, and has been duly identified by the I.O., seeks release of appellant/Ajay on probation of good conduct under the Probation of Offenders



Act, 1958. Learned counsel further submits that as on date, the appellant has undergone around 4 years and 5 months of incarceration. The fine amount is stated to be already deposited as noted in the order dated 07.08.2023 passed by Trial Court.

10. Learned counsel for the appellant/Neeraj, on instructions from the appellant, who has joined the proceedings from VC, also prays to be released on probation. Learned counsel has drawn the attention of the Court to the order dated 02.12.2024 wherein while suspending the appellant's sentence, it was noted that he had undergone almost half of the sentence. On instructions, learned counsel prays that the fine amount be reduced to Rs.5000/- which the appellant undertakes to deposit in 4 weeks.

11. Learned APP for the State submits that while the appellant/Neeraj does not have any criminal antecedents, though appellant/Ajay has other involvements, he has either been acquitted in them or the offence has been compounded.

12. The underlying object of releasing offenders on probation is to facilitate their reintegration into society as law-abiding citizens, fostering self-reliance and aiding in their reformation. A testament to the importance of this provision is that the Supreme Court in Lakhvir Singh & Ors. Vs. State of Punjab & Anr., reported as **(2021) 2 SCC 763**, has extended the benefits of the Probation Act even to convicts who had not completed the mandatory minimum sentence of seven years as prescribed in Section 397 IPC, since IPC was enacted before the Probation Act came into being. The relevant extract is reproduced hereunder:-



“16. ... A more nuanced interpretation on this aspect was given in CCE v. Bahubali¹⁵. It was opined that the Act may not apply in cases where a specific law enacted after 1958 prescribes a mandatory minimum sentence, and the law contains a non obstante clause. Thus, the benefits of the Act did not apply in case of mandatory minimum sentences prescribed by special legislation enacted after the Act.¹⁶ It is in this context, it was observed in State of M.P. v. Vikram Das⁶ that the court cannot award a sentence less than the mandatory sentence prescribed by the statute. We are of the view that the corollary to the aforesaid legal decisions ends with a conclusion that the benefit of probation under the said Act is not excluded by the provisions of the mandatory minimum sentence under Section 397 IPC, the offence in the present case. In fact, the observation made in Joginder Singh v. State of Punjab¹⁷ are in the same context.

...

18. We, thus, release the appellants on probation of good conduct under Section 4 of the said Act on their completion of half the sentence and on their entering into a bond with two sureties each to ensure that they maintain peace and good behaviour for the remaining part of their sentence, failing which they can be called upon to serve that part of the sentence.”

13. Pertinently, in the present case, section 394 IPC does not contain any mandatory minimum sentence and whether a convict for the offence under Section 397 IPC can be released on probation is covered by the decision in Lakhvir Singh (Supra). It is well settled that the provisions of the Indian Penal Code, which predate the enactment of the Probation Act, must be read harmoniously with the latter statute. The bar to granting probation arises only where a subsequent special enactment (containing a non obstante clause) specifically excludes its operation or mandates a minimum sentence that leaves no room for judicial discretion. In the absence of such restriction, this Court retains full discretion to extend the benefit of probation to the appellants, provided the circumstances of the case justify such relief.



14. Probation Officer's report dated 09.10.2025 signed by Mr. Kuldeep Dahiya, Probation Officer, Tis Hazari Court, Delhi has been handed over in Court which is taken on record. The report concerning appellant/Ajay Kumar reflects that he is 32 years of age, educated up to Class VIII, unmarried, and used to reside with his mother, brother, sister-in-law and two nephews at the same family premises in Nangloi and their surrounding is densely populated with lack of basic facilities and hygiene. He states to be physically and mentally fit. His social behaviour and temperament are recorded as normal. The report further records that his mother withdraws a pension of Rs. 12,000/- per month and his brother earns Rs. 9,000/- per month by way of a private job. As per the appellant, his income from all the sources is Rs. 25,000 per month. The economic condition of the family seems satisfactory. His family and neighbour have a positive attitude towards him. The appellant has undertaken to keep away from anti-social activities and element and wants to live a normal life. The Probation Officer has concluded that there is a possibility of rehabilitation and reformation in his case. He has recommended the appellant's case for release on probation.

15. Another probation report dated 09.10.2025 signed by Mr. Kuldeep Dahiya, Probation Officer with respect to appellant/Neeraj has been handed over in Court which is also taken on record. The report reflects that he is 30 years of age, educated up to Class IX, married, and resides with his parents, wife and two daughters at a rented accommodation in Mundka, Delhi. He was found, on his own account, to be physically and mentally fit. His social behaviour and temperament are recorded as normal. The report further records



that Neeraj works in a factory, and his income is Rs. 9,000 per month. The total income of the family from all the sources is Rs. 22,000/-. The economic condition of the family seems satisfactory. His family and neighbour have a positive attitude towards him. The Probation Officer opines that there is a possibility of improvement in the behaviour of the Convict and his rehabilitation and reformation. The appellant has undertaken to keep away from anti-social activities and element and wants to live a normal life. He has recommended the appellant's case for release on probation.

16. The appellant/Ajay and Neeraj are 32 and 30 years old respectively. They have shown remorse for their conduct. Their probation reports record a possibility of rehabilitation and reformation. They have no other convictions. The Trial Court recorded in the order dated 07.08.2023 that the appellant/Ajay had paid the fine of Rs. 25,000/-. In so far as the appellant/Neeraj is concerned, the fine of Rs. 15,000/- imposed upon him is reduced to Rs. 5,000/-, and the same is to be paid within one month.

17. Having regard to the nature and circumstances of the offence, the time that has since elapsed, and considering that both appellants have lived in the community without any further transgression and have demonstrated remorse for their conduct, this Court is persuaded to take a reformatory view. The uniformly positive findings in the Social Investigation Reports, coupled with the appellants' continued good behaviour, affirm that they are capable of leading responsible lives.

18. Accordingly, while upholding the judgement of conviction and order on sentence of the Trial Court, the sentence of imprisonment imposed upon the



appellants is modified to the extent that they shall be released on probation of good conduct under Section 4 of the Probation of Offenders Act, 1958, upon furnishing probation bonds in the sum of ₹ 10,000/- each for a period of one year with one surety of the like amount to the satisfaction of the learned Trial Court, to be furnished within a period of 4 weeks from today.

19. The appellants shall remain under the supervision of the concerned Probation Officer for a period of one year, and shall report before the Probation Officer once every month. 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 appellants shall be liable to undergo the remaining portion of the substantive sentence as awarded by the Trial Court.

20. The appeals are partly allowed in the above terms. The appellant/Ajay Kumar@ Kandi is directed to be released forthwith unless required in any other case.

21. Copy of this judgement be communicated to the Trial Court and the concerned Jail Superintendent for necessary information and compliance.

22. Copy of this order be also uploaded forthwith.

MANOJ KUMAR OHRI, J

OCTOBER 14, 2025

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