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

+ CRL.A. 850/2016, CRL.M.(BAIL) 87/2019

AAS MOHD.

.....Appellant

Through: Counsel for appellant, appearance not
given with appellant in person.

versus

STATE

.....Respondent

Through: Mr Pradeep Gahalot, APP for State
with Ms. Yusra, Adv. with SI Yashpal
Singh, PS Farsha Bazar

+ CRL.A. 953/2016, CRL.M.(BAIL) 181/2020

JITENDER @ JEETU @ NONU

.....Appellant

Through: Counsel for appellant, appearance not
given with appellant in person.

versus

STATE

.....Respondent

Through: Mr Pradeep Gahalot, APP for State
with Ms. Yusra, Adv. with SI Yashpal
Singh, PS Farsha Bazar

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

04.12.2025

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1. By way of the present appeals, the appellants Aas Mohammad and Jitender @ Jeetu @ Nonu seek to assail the judgment of conviction dated 04.06.2016 and the order on sentence dated 02.07.2016, passed by the learned ASJ-02 (East), Special Judge (NDPS), Karkardooma Courts, Delhi



in Sessions Case No. 1625/16, arising out of FIR No. 186/2007, PS Farsh Bazar. By the impugned judgment, both appellants were held guilty for the offences punishable under Sections 392/394/34 IPC read with Section 397 IPC and Section 25 of the Arms Act, 1959. In addition, appellant Jitender @ Jeetu was also convicted under Section 411 IPC.

2. Vide the order on sentence dated 02.07.2016, both appellants were sentenced to undergo seven years' Rigorous Imprisonment with fine of Rs.10,000/-, in default six months' Simple Imprisonment, under Section 392/34 IPC read with Section 397 IPC, and seven years' Rigorous Imprisonment with fine of Rs.5,000/-, in default three months' Simple Imprisonment, under Section 394 IPC. Both appellants were further sentenced to three years' Rigorous Imprisonment with fine of Rs.5,000/-, in default three months' Simple Imprisonment, under Section 25 of the Arms Act. Additionally, appellant Jitender @ Jeetu was sentenced to three years' Rigorous Imprisonment with fine of Rs.5,000/-, in default three months' Simple Imprisonment, under Section 411 IPC. All sentences were directed to run concurrently, with benefit of Section 428 Cr.P.C.

3. During the pendency of the appeals, the sentences imposed upon the appellants were suspended. In the case of appellant Aas Mohammad, interim suspension granted on 29.04.2020 was made absolute vide order dated 09.06.2020. In respect of appellant Jitender, the sentence was suspended vide order dated 02.08.2018. Both appellants have remained on bail thereafter.

4. The prosecution case, in brief, is that on 23.06.2007, the complainant, Priyank Jain, was present at his workplace when he was allegedly robbed by three assailants, including the present appellants. It is the prosecution



allegation that during the course of the robbery, a firearm was used and one *Balram*, an employee present at the spot, sustained a gunshot injury. The complainant and another employee are stated to have identified the present appellants as the perpetrators. Pursuant to the investigation, recoveries were allegedly effected, including cash, a country-made pistol, live cartridges, two knives, and certain jewellery articles, which were later identified as part of the robbed property.

5. In support of its case, the prosecution examined twenty-one witnesses, including the injured witness PW-1 (*Balram*) and the complainant PW-2 (*Priyank Jain*), both of whom narrated the sequence of events and attributed specific roles to the accused persons, including the present appellants. Several police witnesses deposed regarding the arrest of the appellants, the seizure of a *katta*, live cartridges, knives and jewellery articles, and proved the relevant seizure memos, disclosure statements and arrest documents. Two independent witnesses associated with the recovery proceedings were examined, but did not support the prosecution version and were accordingly declared partially hostile, however, their signatures on the recovery memos and their presence during the proceedings stood proved. Medical witnesses brought on record the MLC of injured *Balram*, while the ballistic and CFSL expert proved that the recovered firearm was functional. The Test Identification Proceedings (TIP) record, along with the recovery memos and expert opinion, formed an integral part of the evidence relied upon by the prosecution to corroborate ocular testimony and establish the link between the seized articles and the incident.

6. The appellants were examined under Section 313 Cr.P.C., wherein each denied the allegations in toto, disputed the identification and



voluntariness of the recoveries, and claimed false implication. No explanation was offered by either appellant for the recovery of the firearm, live cartridges, knives or jewellery said to have been recovered at their instance. The defence examined three witnesses. Taken together, their testimonies established that the accused, Jitender, had been undergoing medical treatment.

7. Upon consideration of the oral and documentary evidence, the Trial Court concluded that the complainant and injured witness had consistently identified the appellants, and the recovery of weapons and case property stood duly proved. The Trial Court, therefore, accepted the prosecution version and held both appellants guilty of the charged offences.

8. Having re-examined the record and the reasoning of the Trial Court, the finding of guilt against both appellants is affirmed by this Court.

9. The appellants are present in person and duly identified by the IO. Learned counsel for the appellants submits that both appellants do not press the appeals on merits and confine their prayer to the modification of sentence and release on probation. It is submitted that both appellants have clean antecedents, have remained on bail without misuse, and that the amount imposed by the trial court has been duly deposited, the receipts thereof has been handed over today.

10. Learned APP for the State confirms on instructions that no other criminal case is pending against either appellant.

11. The nominal roll for appellant Aas Mohd., records that he has undergone about 4 years and 8 months of custody including remission. The nominal roll of appellant Jitender records that he has undergone 3 years of custody including remission.



12. Pursuant to this Court's directions, the Social Investigation Report (SIR) submitted in respect of the appellant Aas Mohammad records that he is a 51-year-old married man residing with his wife and two children at the present address for the last seven years. The report notes that the appellant's first wife expired about 25 years ago and he is now living with his second wife. The appellant is stated to be employed in loading and unloading work and drives his owned Tata Champion vehicle, earning approximately Rs. 25,000/- per month. He is paying rent of Rs. 8,000/- for the premises. He is stated to be the sole breadwinner for his family. The SIR reflects that the appellant has not attended school and that his physical and mental condition is normal. The neighbours interviewed have given a favourable response regarding his conduct, stating that he is known to them for many years and has good behaviour. The SIR concludes that the appellant has family support, no adverse background and is suitable for consideration of probation.

13. The Social Investigation Report (SIR) submitted in respect of the appellant Jitender Sharma reflects that he is a 41-year-old married man residing with his mother and wife at the family's ancestral house at the address mentioned. The appellant is stated to have a history of mental illness and has been under treatment for anxiety, insomnia and depression, and was earlier treated at IHBAS. The SIR notes that the appellant is currently unemployed due to his medical condition and the household is supported financially by his wife, who is employed in a private job earning approximately Rs. 19,000/- per month. The report states that the appellant maintains cordial behaviour with his family and neighbours. The SIR records that there are no other criminal cases against him. Based on the



family support structure, mental health concerns and absence of negative social indicators, the Probation Officer has opined that the appellant may be considered suitable for release on probation under supervision.

14. 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.”



15. In the present case, although the appellants were also convicted under Section 25 of the Arms Act, which carries a statutory minimum sentence, the nominal rolls confirm that both have already undergone custody for the said offence.

The surviving sentence now relates only to the offence under Section 392 IPC, which does not prescribe any minimum punishment. While Section 397 IPC provides a minimum sentence of seven years, there is no express statutory bar excluding the application of the Probation of Offenders Act, 1958, and the Act, being a later and reform-oriented legislation, operates harmoniously unless specifically excluded. Courts have recognised that where the mandatory sentence under a special statute stands already satisfied and the material reflects genuine prospects of reform, probation may be considered even in cases involving Section 397 IPC. Consequently, with the Arms Act requirement already undergone and no statutory prohibition applicable to Section 392 IPC, the discretion under Section 4 of the Probation of Offenders Act remains available for consideration

16. Having regard to the appellants' age, long lapse of time since the incident, clean antecedents, compliance during suspension of sentence, and the favourable Social Investigation Reports, this Court is persuaded to adopt a reformatory approach.

17. Accordingly, while affirming the convictions, the substantive sentence is modified to the extent that both appellants shall be released on probation of good conduct for a period of one year, upon furnishing a probation bond in the sum of Rs. 10,000/- each, with one surety in the like amount to the satisfaction of the Trial Court within four weeks.



18. The appellants shall report before the Probation Officer once every month and maintain peace and good behaviour. In the event of breach of conditions or involvement in any other offence, the benefit of this order shall stand withdrawn, and the appellants shall undergo the remaining sentence awarded by the Trial Court.

19. The appeals and pending applications are accordingly disposed of in the above terms.

20. Subject to completion of the above, bail bonds furnished earlier shall stand cancelled and sureties discharged.

21. A copy of this judgment be communicated to the Trial Court, Probation Officer and Jail Superintendent for information and compliance.

MANOJ KUMAR OHRI, J

DECEMBER 4, 2025

Pallavi