



2025:DHC:12040



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

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Date of Decision: 22.12.2025

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CRL.A. 1099/2018

MD. NASIM

.....Appellant

Through: Ms. Mansi Yadav, Advocate (Amicus Curiae, Pro Bono)

versus

STATE

.....Respondent

Through: Ms. Shubhi Gupta, APP for State with Ms. Yusra, Advocate with SI Sandeep PS Narela, Delhi (M:839894096).

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal, the appellant seeks to assail the judgment of conviction dated 04.09.2018 and the order on sentence dated 12.09.2018, passed by this Court in SC No. 197/17, arising out of FIR No. 15/17, P.S. Narela, whereby the appellant was convicted for the offence punishable under Section 397 IPC read with Section 392/34 IPC.

2. Vide order on sentence dated 12.09.2018, the appellant was sentenced to undergo rigorous imprisonment for a period of eight years along with a fine of Rs. 8,000/-, and in default of payment of fine, to further undergo simple imprisonment for four months for the offence punishable under Section 397 IPC read with Section 392/34 IPC. Benefit of Section 428 Cr.P.C. was also granted.



3. During the pendency of the present appeal, the sentence imposed upon the appellant was suspended by this Court vide order dated 17.03.2021, and the appellant was released on bail.
4. The prosecution case, in brief, is that on 03.01.2017, the complainant was travelling in his car when it developed a fault near A-5 Chowk, Narela. At that time, the appellant along with a co-accused allegedly approached him, whereupon the appellant is stated to have threatened the complainant with a knife while the co-accused took his mobile phone. A PCR van reached the spot and both accused were apprehended while attempting to flee. The robbed mobile phone was allegedly recovered from the possession of the co-accused, and a knife was recovered from the appellant.
5. The prosecution examined eight witnesses in support of its case. The complainant *Sh. Sumer Singh* was examined as PW-1, who supported the prosecution and identified the appellant in Court. He proved his complaint and related documents, as well as the case property i.e., the robbed mobile phone and the knife, exhibited as Ex. P-1 and Ex. P-2 respectively. PW-3 ASI *Rajbir Singh*, In-charge of the PCR Van, and PW-4 Ct. *Krishan*, both deposed regarding the receipt of information, their arrival at the spot, the apprehension of the accused while attempting to flee, and the recovery of the robbed mobile phone and knife. PW-5 Ct. *Ashok*, a witness to the investigation, supported the prosecution case regarding the proceedings conducted at the spot. The rest of the witnesses were formal in nature who deposed with respect to various aspects of investigation.
6. The statement of the accused was recorded under Section 313 Cr.P.C., wherein he denied all incriminating circumstances and claimed false implication. No defence evidence was led. The defence suggested that the



complainant had falsely implicated the accused and that the incident did not occur in the manner alleged, however, no material was placed on record to substantiate such a plea.

7. Upon re-appreciation of the material on record, this Court finds no reason to interfere with the findings returned by the Trial Court. The testimony of PW-1 was found to be consistent, cogent, and trustworthy, and stood duly corroborated by the testimonies of the PCR officials, namely PW-3 and PW-4, who apprehended the accused immediately after the incident. The recovery of the robbed mobile phone and the knife further lends strong corroboration to the prosecution version, which is also supported by the contemporaneous documentary evidence including the DD entries, seizure memos, and PCR records. The Trial Court rightly found that no material contradictions or infirmities were brought out in the prosecution case and that the defence plea of false implication remained unsubstantiated. This Court concurs with the findings of the Trial Court and upholds the conviction of the appellant under Section 397 IPC read with Section 392/34 IPC.

8. 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 release on probation. It is submitted that the appellant has no previous criminal antecedents, has already undergone a substantial period of incarceration. It is further submitted that the appellant is the sole earning member of his family and is suffering from multiple medical ailments.

9. Learned APP for the State, submits that as per record, the appellant is not involved in any other criminal case.



10. Pursuant to the directions of this Court, the Social Investigation Report (SIR) has been placed on record. As per the said report, the appellant is a 32 year old male, residing at H. no. 876, pkt-11, sec.-A-c, Punarwas Colony, Narela, Delhi. He is married and supports his aged parents and wife. The report records that the appellant is presently engaged in earning his livelihood by driving an e-rickshaw, earning approximately Rs. 10,000/- per month. His family's overall income is modest, and they largely depend upon him for sustenance. The Probation Officer has noted that the appellant has no previous criminal involvement. The report further records that the appellant suffers from certain medical ailments, and in this regard medical documents have been handed over, which are taken on record. The Probation Officer has opined that the appellant is a fit candidate for being released on probation under supervision and that such release would aid his social rehabilitation.

11. Further, the nominal roll on record records that the appellant has undergone about more than half of his sentence. His jail conduct is also recorded as *satisfactory*.

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.¹, 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

¹ (2021) 2 SCC 763



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. The Court observed that the bar on the application of the Probation of Offenders Act arises only where a special statute enacted subsequent to 1958 prescribes a mandatory minimum sentence coupled with a non obstante clause. It was held that the provisions of the Probation of Offenders Act can operate harmoniously with the provisions of the Indian Penal Code in appropriate cases, depending upon the facts and circumstances of each case. In the present matter, the appellant *Mohd. Naseem* stands convicted for the offence punishable under Section 397 IPC read with Section 392/34 IPC, wherein Section 397 IPC prescribes a minimum sentence of seven years. However, it is equally relevant to note that the offence under Section 392 IPC does not prescribe any mandatory minimum sentence. Further, the



appellant has already undergone a substantial period of incarceration and has remained on bail for a considerable period, during which his conduct has remained satisfactory and there has been no allegation of misuse of liberty. In these circumstances, and keeping in view the settled legal position that the benefit of probation is not excluded merely on account of the minimum sentence prescribed under Section 397 IPC, this Court is of the considered view that the provisions of the Probation of Offenders Act can be justly invoked in the present case.

14. Further, the Social Investigation Report placed on record reflects that the appellant is a first-time offender with no previous criminal antecedents and belongs to a modest socio-economic background. It is noted that he is supporting his dependent family members and has been conducting himself in a responsible manner. The report further records that the appellant has exhibited a positive attitude and a willingness to reform. The Probation Officer has opined that the appellant is a suitable candidate for release on probation and that such release would facilitate his social rehabilitation. This Court also takes into consideration the neurological medical conditions suffered by the appellant, as discernible from the medical documents handed over during the course of hearing. In the totality of the circumstances, this Court is of the considered view that the ends of justice would be better served by adopting a reformatory approach.

15. Accordingly, while maintaining the conviction of the appellant under Section 397 IPC read with 392/34 IPC, this Court is persuaded to extended the benefit of Section 4 of the Probation of Offenders Act, 1958 to the appellant.



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16. Consequently, the substantive sentence of imprisonment imposed upon the appellant *Mohd. Naseem* is modified, and he is directed to be released on probation of good conduct for a period of one year, upon his furnishing a probation bond in the sum of Rs.10,000/- with one surety of the like amount, to the satisfaction of the Trial Court, within a period of six weeks from today. The appellant 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.

17. The appellant shall maintain peace and good behaviour during the period of probation and shall not involve himself in any criminal activity. In the event of breach of any of the conditions of probation or involvement in any other offence, the benefit extended under this order shall stand revoked, and the appellant shall be liable to undergo the remaining portion of the sentence originally imposed upon him.

18. The appeal is accordingly disposed of in the above terms.

19. The bail bonds furnished by the appellant stand cancelled, and the sureties shall stand discharged accordingly.

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

MANOJ KUMAR OHRI
(JUDGE)

DECEMBER 22, 2025/kb