

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRR-2173-2011 (O&M)
Date of decision: 04.05.2026

Mohinder Singh @ Sai and another...Petitioner(s)

VERSUS

State of Punjab...Respondent(s)

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Vivek K. Thakur, Advocate for the petitioner..
Mr. Mohit Kapoor, Sr. DAG Punjab.

VINOD S. BHARDWAJ, J. (Oral)

1. The instant criminal revision petition has been preferred against the judgment of conviction and order of sentence dated 29.08.2008 passed by Additional Chief Judicial Magistrate, Kapurthala whereby the revisionists-petitioners had been convicted for commission of offences punishable under Section 420 of the Indian Penal Code, 1860 and Section 24 of the Emigration Act, 1983 in case bearing FIR No. 11 of 22.01.2002 registered under Sections 406/420/506 of the Indian Penal Code, 1860 and Section 24 of the Emigration Act, 1983 at Police Station Sadar Kapurthala, District Kapurthala. The revisionists-petitioners have been sentenced as under:-

Under Section	Sentence
420 I.P.C.	RI for a period of 02 years and to pay a fine of Rs.1,000/- each and in default thereof to further undergo RI for a period of 01 month, each.

24 of the Emigration Act, 1983	RI for a period of 06 months, each.
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Both the sentences were ordered to run concurrently.

2. Further, challenge is also to the judgment dated 18.08.2011 passed by the Additional Sessions Judge, Kapurthala whereby judgment of conviction and order of sentence passed by the trial Court were affirmed.

3. The facts of the present case, in brief, are that the FIR was registered on the basis of an application (Ex. PA) submitted by the complainant, Balbir Kaur wife of Kewal Singh, resident of Village Khusropur, District Kapurthala, before the Senior Superintendent of Police, Kapurthala. The complainant alleged that the accused, Mohinder Singh and Lakhwinder Singh, who were known to her as residents of the same village and were engaged in the business of travel agents, had represented that they could facilitate the sending of her son, Gurmail Singh, to the United States of America. It was stated that, relying upon such representations and after consultation with her family members, the complainant entered into an agreement with the accused, who demanded a total sum of Rs.8 lakhs for arranging the travel. An initial amount of Rs.1 lakh was paid to them and the passport of her son was handed over, with the understanding that the remaining amount would be paid upon procurement of the visa. Subsequently, the accused showed certain documents seemingly related to the visa and demanded the balance amount. Acting upon their representations, the complainant arranged funds by raising loans on interest, including by mortgaging her land and borrowing from a commission agent and relatives and paid an additional sum of Rs.7 lakhs to the accused on

12.05.2000 in the presence of witnesses. It was further alleged that the accused thereafter took her son to Delhi but, after a few days, sent him back without making any arrangements for his travel abroad. Despite repeated requests, neither was the son sent overseas nor were the amount paid and the passport returned. Alleging that she had been cheated and defrauded by the accused persons, the complainant sought legal action. On the basis of the said allegations, the FIR under Sections 406, 420, 506 of the Indian Penal Code and Section 24 of the Emigration Act was registered.

4. After completion of the investigation, the final report under Section 173 Cr.P.C. against the petitioner-accused was filed on 05.03.2002 and documents were supplied to the accused-petitioners free of cost.

5. Finding a prima facie case having been made out, the petitioners was charge-sheeted for the commission of offences punishable under Section 420 of the Indian Penal Code, 1860 and Section 24 of the Emigration Act, the contents of the same were read over the and explained to the accused, to which he pleaded not guilty and claimed trial.

6. In order to substantiate its case, the prosecution examined following witnesses:

PW-1	Balbir Kaur (complainant).
PW-2	Kewal Singh.
PW-3	Sohan Singh.
PW-4	Gurmail Singh.
PW-5	Darshan Singh.
PW-6	ASI Satnam Singh.

PW-7	ASI Balwinder Singh.
PW-8	Charan Singh.

Thereafter, the prosecution evidence was closed by order.

7. The statement of the petitioner was recorded under Section 313 of the Code of Criminal Procedure, wherein all incriminating circumstances and evidence appearing on record were put to him. The petitioner denied the allegations in their entirety, described the prosecution case and evidence as false and fabricated and asserted his innocence. The petitioners examined Pritam Singh as DW-1 and Gurdev Singh as DW-2 and thereafter, closed the defence evidence.

8. After considering the arguments advanced, the testimonies of witnesses and the evidence placed on record, the Trial Court, vide judgment dated 29.08.2008, held the petitioner guilty for commission of offences punishable under Section 420 of the Indian Penal Code, 1860 and Section 24 of the Emigration Act, 1983 and sentenced him as mentioned above.

9. Aggrieved by the aforesaid judgment of conviction, the petitioner preferred Criminal Appeal No. 50-A dated 15.09.2008 before the Court of the Additional Sessions Judge, Kapurthala. Vide judgment dated 18.08.2011, the judgment of conviction and order of sentence were affirmed by the Additional Sessions Judge, Kapurthala. Hence, the present revision petition.

10. After advancing arguments at some length, learned counsel appearing on behalf of the petitioners submits that, vide order dated 16.12.2011 passed by this Court, the remaining sentence of the petitioners

was suspended after they had undergone an actual period of custody of more than 1 year out of the total sentence of 2 years. Learned counsel further submits that he does not wish to press the present revision petition on merits and confines his submissions solely to the question of quantum of sentence imposed upon the petitioners. The following mitigating circumstances are pointed out by the counsel for the petitioner:

- a. The occurrence in question pertains to the year 2002 and a period of more than two decades has elapsed since then, during which the petitioners have undergone the rigours of investigation, trial and prolonged criminal proceedings, entailing substantial mental, social and financial hardship.
- b. It is further submitted that the petitioners have already undergone an actual period of custody exceeding one year out of the sentence imposed, which, in the facts and circumstances of the case, constitutes a substantial part of the sentence.
- c. Petitioner No.1, Mohinder Singh @ Sai and petitioner No.2, Lakhwinder Singh, are father and son respectively. At the time of their conviction, petitioner No.1 was about 65 years of age and petitioner No.2 was approximately 27 years old; at present, they are around 83 and 45 years of age respectively. Petitioner No.1 is now of advanced age and deserves a compassionate approach, while petitioner No.2 bears significant familial and social

responsibilities which constitute significant mitigating circumstances warranting a lenient view in sentencing..

- d. It is also noteworthy that there is nothing on record to indicate that the petitioners are habitual offenders.
- e. The long passage of time since the occurrence, coupled with the absence of any subsequent involvement in criminal activity, reflects positively on the conduct of the petitioners and supports the inference of their reformation.
- f. The advanced age of petitioner No.1, in particular, renders further incarceration unduly harsh and disproportionate, especially when viewed in the context of the time already undergone and the lapse of more than two decades since the incident.
- g. It is also urged that continued incarceration at this stage would not serve any meaningful or deterrent purpose and the ends of justice would be adequately met by reducing the sentence to the period already undergone.
- h. The petitioners have not pressed the challenge to the conviction on merits and has confined their submissions only to the quantum of sentence, thereby demonstrating acceptance of the judicial outcome and willingness to reform.
- i. The ends of justice would be adequately met by reducing the sentence to the period already undergone, particularly

in view of the compensatory relief already granted to the victims and the absence of aggravating circumstances.

11. Per contra, learned State counsel submits that both the Courts below have rightly appreciated the evidence led on record and have concurrently recorded a finding of conviction against the petitioner. It is contended that such concurrent findings, based on proper evaluation of evidence, carry a presumption of correctness. Learned counsel further submits that the scope of revisional jurisdiction is limited and does not extend to re-appreciation of evidence or to permitting the petitioner to set up a new line of defence. Interference is warranted only where there is a manifest illegality, material irregularity or perversity in the findings recorded by the Courts below. It is contended that the petitioner has failed to point out any such infirmity in the impugned judgments. There is no allegation, much less any demonstration, of misreading of evidence or non-consideration of material facts. Thus, in the absence of any such jurisdictional error no case is made out for interference and consequently, there is no occasion to upset the findings of conviction or the sentence awarded and affirmed by the Courts below.

12. I have heard learned counsel for the parties and have gone through the impugned judgments.

13. This Court, in CRR-2697-2025 titled ***Lakshay Jain v. State of Punjab & Another***, vide order dated 14.11.2025, has held that sentencing must prioritise a reformatory approach, assessing an offender's background and circumstances rather than adopting a purely punitive stance. Mere involvement in an offence does not, by itself, establish criminality; instead,

the totality of circumstances including the manner of the act, antecedents, conduct, and intent must guide sentencing. The law, therefore, distinguishes between errors of judgment and acts driven by deliberate mens rea, recognising that offenders are often capable of reform and should not be presumed beyond rehabilitation. The relevant extract of the aforesaid judgment are as follows:

“32. The imposition of punishment is a refined judicial function that demands a careful harmonization of its underlying purposes namely, retribution, deterrence, and reformation. This balance must reflect not only the reasoning of the Court but also the ethical standards and social context in which justice is administered. As societal values and circumstances evolve, the prominence accorded to each of these aims necessarily varies, requiring the Court to adapt its emphasis in response to the changing demands of justice. The aforesaid principle found early articulation in the writings of Justice Caldwell, who, in his authoritative work “Criminology,” observed that:

“If the infliction of pain is to have its greatest effect upon the behavior of a person, it must follow soon after the act for which it is given. But punishment always takes place weeks or even months after the offense has been committed, since the offender must first be apprehended, tried, and convicted. Such delay tends to disconnect the punishment from the offense in the mind of the offender, and it may well be considered as merely another painful

experience in an unjust world.”

33. *Moreover, Italian criminologist and jurist Cesare Beccaria, in his seminal treatise “On Crimes and Punishments,” propounded the doctrine of penal parsimony, emphasizing that the justification of any criminal justice system rests upon its capacity to inflict the least possible evil necessary to achieve its ends. The underlying premise is that punishment, being in itself a necessary evil and devoid of inherent virtue, must be confined strictly within the bounds of necessity. The imposition of suffering or restriction upon an offender cannot extend beyond what is indispensable for the preservation of social order.*

34. *While ‘retributive’ object of sentencing is seen regressive, in modern day sentencing jurisprudence for its focus on punishing proportionally for the harm done and caters to the negative senses of spite and anger against a wrongful act, the rehabilitative/reformative approach examines the circumstances surrounding the offender on social, economical, physical and psychological level so as to reintegrate the offender in the social mainstream. The law extends the benefit of good and perceives a probability and possibility of reform. It aims at capitalising a perceived social liability. The expectation of law is based on the surrounding circumstances to distinguish between a ‘criminal’ and an ‘offender’.*

35. *While the pre-requisites of crime do not distinguish two*

persons, on the legal scale, this aspect is significant for sentencing. A mere involvement of a person in crime may not necessarily mark a person as a 'criminal.' 'Criminality' in mind and action has to be determined from the totality of circumstances including the mode and manner in committing an offence, the conduct pre and post the offence, the criminal antecedents, nature of involvement, influence of peers etc. and not just from an isolatory consideration of commission of an offence. A Court of law would not assume every offender to be beyond reform and differentiate in punishment on considering whether the offences arise due to human error or that stem from actions propelled by mens rea."

14. Having heard learned counsel for the parties and on consideration of the facts and circumstances of the case, this Court is of the view that, while the findings of conviction recorded by the Courts below do not warrant interference in exercise of revisional jurisdiction, the question of sentence calls for reconsideration. The occurrence pertains to the year 2002 and more than two decades have elapsed since then, during which the petitioners have faced the rigours of criminal prosecution and trial. It is also not in dispute that the petitioners have already undergone a substantial part of the sentence, having remained in custody for a period exceeding one year. Petitioner No.1 is now of advanced age, while petitioner No.2 is burdened with familial responsibilities and the prolonged pendency of proceedings has already inflicted considerable mental, social and economic hardship upon them. The cumulative effect of the long passage of time, partial sentence

already undergone, absence of any subsequent criminal conduct and the personal circumstances of the petitioners, warrants a compassionate and reformatory approach in the matter of sentencing.

15. In the totality of the circumstances, I am satisfied that adequate and compelling mitigating factors exist which justify interference with the quantum of sentence. The peculiar facts of the present case, as noticed hereinabove, clearly make out a case for reduction of the sentence to the period already undergone, as any further incarceration would not serve the ends of justice.

16. Accordingly, I deem it appropriate to partly allow the petition. While maintaining the judgment of conviction, the order of sentence so passed is modified. The sentence awarded to the petitioners under Section 420 of the Indian Penal Code, 1860 and Section 24 of the Emigration Act, by the Additional Chief Judicial Magistrate, Kapurthala vide order of sentence dated 29.08.2008 and affirmed by the Additional Sessions Judge, Kapurthala vide judgment dated 18.08.2011, is modified and reduced to the period already undergone by him.

17. The petitioners, if confined in jail and is not required in any other case, shall be released forthwith, in accordance with law.

18. The petition is accordingly ***partly allowed***.

19. Pending criminal misc. application(s), if any, stand disposed of.

(VINOD S. BHARDWAJ)
JUDGE

04.05.2026

Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No