IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

101 CRA-S-437-SB-2004

HARDAMAN SINGH .....APPELLANT

Vs.

STATE OF PUNJAB .....RESPONDENT

2. CRA-S-424-SB-2004

M/s MUNAK CHEMICAL LIMITED AND ANOTHER .....APPELLANTS

Vs.

STATE OF PUNJAB .....RESPONDENT

Date of Decision: 22.04.2025

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: Mr. Vishal Gupta, Advocate
for the appellant in CRA-S-437-SB-2004.

Mr. Dinesh Goyal, Advocate and
Mr. Jugansh Goyal, Advocate
for the appellant in CRA-424-SB-2004.

Mr. R.K. Takkar, DAG, Punjab.

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DEEPAK GUPTA, J.

In complaint case No. 7 of 1997 filed by Chief Agricultural Officer, Kapurthala before learned Special Judge, Kapurthala, accused-Hardaman Singh, sole proprietor of M/s Chadha Khad Store, Nadala, District Kapurthala; and accused Nirbhai Singh, Chief Production Officer of M/s Munak Chemicals Limited, Bathinda were convicted by the Court of learned Special Judge, Kapurthala under Section 7 of the Essential Commodities Act, 1955 vide judgment dated 12.02.2004, on the allegations that fertilizer kept for sale by M/s Chadha Khad Store, Nadala, in the brand name of *'Pooja Brand Singal Super Phosphate',* manufactured by M/s Munak Chemicals Limited, on analysis was found to be 'non-standard'. Vide a separate order dated 12.02.2004, both these accused i.e. Hardaman Singh and Nirbhai Singh were sentenced to undergo rigorous imprisonment for a period of 02 years

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each and to pay a fine of ₹5000/- each with default sentence of one month rigorous imprisonment in case of non-payment of fine.

2. Against the aforesaid conviction and sentence, the two convicts namely Hardaman Singh and Nirbhai Singh have filed the present two separate appeals.

3. At the outset, learned counsel for both the appellants submit that offence in question was committed way back in 1996; that conviction was recorded in 2004 after trial of approximately 08 years; that the appellants are facing agony of trial and further proceedings for the last almost 30 years; that both the appellants are now quite aged and so, considering all these circumstances, they be released on probation, as none of the appellants want to press their appeal against conviction.

4. Specific statement is made by learned counsel for both the appellants withdrawing the appeal against conviction and confining their prayer only against the order of sentence so as to release the appellants on probation.

5. It is contended by learned counsel that in the similar facts and circumstances as in the present case, in a case pertaining to Essential Commodities Act, 1955, Hon'ble Supreme Court was pleased to release the appellant on probation in case titled ***Tarak Nath Keshari Vs. State of West Bengal***, *2023 SCC Online SC 605*, which was also relied by this Court in ***CRR-43-2010 titled Aditya Kumar Vs. State of Haryana*** decided on 03.04.2025.

6. Learned State counsel has opposed the prayer.

7. This Court has considered submissions of both the sides and have appraised the record.

8. Considering the statement as made by learned counsel for the appellants, both the appeals against the impugned judgment of conviction

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dated 12.02.2004 are hereby dismissed as withdrawn, inasmuch as conviction is otherwise also found to be based upon proper appreciation of evidence on record.

9. As far as the impugned order of sentence is concerned, it is noticed that at the time of commission of offence, appellant-Hardaman Singh was 61 years of age, which means that as of now, he is approximately 89 years of age. Similarly, appellant-Nirbhai Singh was aged 47 years at the time of commission of offence, which means that as of now, he is 75 years of age. The offence in question was committed in 1996. Conviction was recorded in February, 2004. Both these appeals were filed and admitted in 2004. The same could not be listed earlier due to huge pendency and have ultimately been listed for final hearing in 2025. Meaning thereby, from the date of commission of the offence, the two appellants have already faced agony of approximately 30 years including the trial proceedings and then the appeal proceedings.

10. The question is that whether in the aforesaid facts and circumstances, particularly considering the advanced age of the two appellants, it will be justifiable to send the appellants behind bars to carry out the sentence as imposed by the trial Court.

11. A similar question was considered by this Court in ***Aditya Kumar Vs. State of Haryana (supra).*** It is relevant to reproduce the observations as made by this Court, which are as under:-

> "19. As far as the impugned order of sentence is concerned, the accused-petitioner has been sentenced to undergo the minimum sentence as provided under the Statute i.e. rigorous imprisonment for a period of three months and fine of ₹500/- with default sentence of one month.
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> 20. As per the custody certificate, petitioner has already undergone the actual custody period of seven days and he is not involved in any other offence. It is also noticed by this Court that offence in question was committed in September, 1999 and after a protracted trial of more than 8

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years, he was ultimately convicted in October 2007 and then his appeal was dismissed by the Appellate Court in January 2010. The sentence of the petitioner was suspended by this Court in January 2010 and this way, he is out on bail for the last more than 15 years.

21. In the above circumstances, whether it will be justifiable to send him behind bars to carry out the remaining sentence; or can he be released on probation; or whether sentence can be reduced for the period already undergone by him?

22. As per Section 20AA of the PFA Act , the provisions of Probation of Offenders Act 1958, or Section 360 of the Code of Criminal Procedure are not applicable to a person convicted of an offence under the provision of the PFA Act, unless that person is under the 18 years of age.

23. In this case, at the time of recording conviction in 2007, the age of the petitioner is mentioned to be 36 years as per the custody certificate, which means that at the time of committing the offence, he was 27 years of age and not less than 18 years of age. As such, he cannot be granted benefit of probation in view of Section 20AA of the PFA Act.

24. Although, in ***Ishar Dass Vs. State of Punjab, 1972 PLR 475,*** it was held by Hon'ble Supreme court that provisions of Probation of Offenders Act, 1958 are not excluded in the case of person found guilty of offence under the PFA Act, but it is important to notice that Section 20AA was inserted in PFA Act, 1958 by way of an amendment in 1976 and therefore, the case of ***Ishar Dass (supra)*** is not applicable in the present case.

25.1 In yet another case titled ***State of Punjab Vs. Mithu Singh, 1988 (3) SCC 607***, it was held by Hon'ble Supreme Court that Section 20AA of the PFA Act applies also to the offences committed prior to its enactment.

25.2 In the present case, since the offence was committed in 1999; whereas, the amendment by inserting Section 20AA was brought in 1976, as such this authority is also of no help to the case of the petitioner so as to give him the benefit of probation.

26. In ***Joginder Singh Vs. State of Punjab, 1980 PLR 585***, a Full bench of this Court held that benefit of provisions of the Probation of Offenders Act, 1958 can be extended even in a case, where minimum sentence is provided. However, in that case before this Court, the accused had been convicted for the offence under Section 61 of the Punjab Excise Act, 1914. That was not a case committed under the provisions of the PFA Act and so, not applicable to the facts of present case.

27. In ***Lakhvir Singh etc. Vs. The State of Punjab and another, 2021 AIR (Supreme Court) 555***, benefit of probation was extended in a case, where minimum sentence was provided. However, that was the case under the provisions of Indian Penal Code. Similarly in ***Tarak Nath Keshari Vs. State of West Bengal, 2023 SCC Online SC 605***, the benefit of probation was granted despite the fact that minimum sentence of imprisonment was provided, but that was the case under the provisions of Essential Commodities Act, 1955. Thus, in none of these cases, the provisions of the PFA Act were applicable.

28. In ***State of Haryana Vs. Yad Ram 1987(1) RCR (Criminal) 264***, a Full Bench of this Court has held that when conviction is recorded under the Prevention of Food Adulteration Act, then the minimum sentence provided in the provision cannot be further scaled down.

29. Thus, from the legal position as above, it emerges that when a conviction is recorded under the provisions of PFA Act, neither the accused can be granted the benefit of Probation of Offenders Act, 1958 nor he can be sentenced to the period of imprisonment lesser than as provided in the Act.

30. However, in the case of ***Yad Ram (Supra)***, the effect of Article 21 of the Constitution of India was not discussed, providing for speedy trial.

31. It cannot be disputed that right to speedy and expeditious trial is one of the most valuable and cherished right guaranteed under the Constitution. Article 21 of the Constitution of India takes in its sweep the right to expeditious and fair trial. Even Article 39A of the Constitution of India recognizes the right of citizens to equal justice and free legal aid. To put it

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simply, it is the constitutional duty of the Government to provide the citizens of the country with such judicial infrastructure and means of access of justice so that every person is able to receive an expeditious, inexpensive and fair trial.

32. Though our Constitution does not expressly declare the right to speedy trial as a fundamental right, but the said right was recognized in ***Hussainara Khatoon & Ors. Vs. Home Secretary, State of Bihar (1980) 1 SCC 81***, wherein it was held by Hon'ble Supreme Court that speedy trial is implicit in the broad sweep and content of Article 21 of the Constitution of India. Subsequently, in the serious of judgments, Hon'ble Supreme Court has held that a reasonably expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. Hon'ble Supreme Court has gone to the extent that speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitute denial of justice.

33. Speaking about the need of speedy trial, the Constitutional Bench of Hon'ble Supreme Court in ***Kartar Singh Vs. State of Punjab, (1994) 3 SCC 569*** has observed as under: -

> *"The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure."*

34. As has been observed in the case of ***Hussainara Khatoon & Ors (supra),*** no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21.

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35. It has been reiterated by Hon'ble Supreme Court in ***Mahendra Lal Dass Vs. State of Bihar (2002) 1 SCC 149*** that right to speedy trial encompasses all the stages, namely, stages of investigation, inquiry, trial, appeal, revision and re-trial. Each case has to be decided on its own merits. As has been held in ***P. Ramachandra Rao Vs. State of Karnataka, (2002) 4 SCC 578***, it must be left to the judicious discretion of the Court seized of an individual case to find out from the totality of the circumstances of the case, if the time consumed up to a given point of time amounted to violation of Article 21. In ***State vs. Narayan Waman Nerukar (2002) 7 SCC 6,*** Hon'ble Supreme Court held that while considering the question of delay, the Court has a duty to see whether the prolongation was on account of any delay in tactics adopted by the accused and other relevant aspects, which contributed to the delay. There cannot be any empirical formula of universal application in such matters.

36. In ***Chander Bhan Vs. State of Haryana, (1996) 1 RCR (Crl) 125***, it has been observed by a Coordinate bench of this Court as under: -

> *"8. Now it cannot be disputed that the right to speedy and expeditious trial is one of the most valuable and cherished rights guaranteed under the Constitution. Fundamental rights were not a teasing illusions to be mocked at. These were meant to be enforced and made a reality. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any-the-less the right of the accused. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. This is how the Court shall understand this right and have gone to the extent of quashing the prosecution after such inordinate delay in concluding the trial of an accused keeping in view the facts and circumstances of the case. Keeping a person in suspended animation for 10 years or more without any case at all cannot be within the spirit of the procedure established by law. <u>It is</u>*

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correct that although minimum sentence to be imposed upon a convict is prescribed by the statute yet keeping in view the provisions of Article 21 of the Constitution of India and the interpretation thereof qua the right of an accused to a speedy trial, judicial compassion can play a role and a convict can be compensated for the mental agony, which he undergoes on account of protracted trial due to the fault of the prosecution by this Court in the exercise of its extraordinary jurisdiction.

9. An identical question had arisen before the apex Court in ***Braham Dass v. State of Himachal Pradesh (1988) 2 FAC 13***; wherein their Lordships were pleased to observe as under:-

> *"Coming to the question of sentence, we find that the appellant had been acquitted by the trial Court and High Court while reversing the judgment of acquittal made by the appellate judge has not made clear reference to Clause (f). The occurrence took place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to jail at this point of time for undergoing the remaining period of the sentence, though ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act, the Court should take strict view of such matter."*

10. This view was followed by this Court in ***Nand Lal v. State of Haryana (1992) 1 Rec. Cri R. 82*** and ***Ishwar Singh v. State of Haryana 1994(1) RCR 160.*** The present case is fully covered by the view expressed by the Apex Court and by this Court in the judgments cited above and I have no reason to differ therewith.

11. For the reasons mentioned above, the conviction of the petitioner for an offence under Section 16(1)(a)(i) read with Section 7 of the Act is hereby maintained. However, keeping in view the facts and circumstances of the case and the fact that the petitioner has already

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faced the agony of the protracted prosecution and suffered mental harassment for a long period of ten years, his sentence is reduced to the period of sentence already undergone. Sentence of fine is, however maintained along with its default clause."

37. Another Coordinate Bench of this Court has taken the similar view in ***Vikas Mehta Vs. State of Haryana, Law Finder doc ID #2041916*** by placing reliance upon ***Des Raj Vs. State of Haryana, 1996(1) RCR (Criminal) 689.***

38. Keeping in mind the abovesaid legal principles, when facts and circumstance of the present case are examined, it is noted that petitioner faced protracted trial from 1999 till 2007, when he was ultimately convicted by the trial Court. There is nothing on record to indicate that there was any attempt on the part of the accused-petitioner to delay the trial. His appeal was dismissed in 2010. After the present Criminal Revision was admitted by this Court in 2010, because of the huge pendency, the file could not be listed for final hearing and when it has now been listed for final hearing in 2025, it is almost more than 15 years from the date of its admission.

39. Thus, the sword of conviction kept on hanging on the head of the petitioner for the last 26 years. It is easy to say that for almost all the time, the petitioner was on bail, but one cannot imagine the agony & trauma, which is faced by such a person, whose conviction has been recorded by the Court. The Court also cannot ignore the age factor, inasmuch as at the time when the offence was committed in 1999, petitioner was hardly 27 years of age. Now, after passing of the 26 years, he is 53 years of age and so, sending him behind bars at this stage to undergo the remainder of the sentence, will not be in the interest of justice."

12. It is to be noted that in ***Tarak Nath Keshari Vs. State of West Bengal, 2023 SCC Online SC 605,*** which has also been referred by this Court in ***Aditya Kumar's case (Supra)***, the benefit of probation was granted by Hon'ble Supreme Court in a case under Essential Commodities Act, despite the fact that minimum sentence of imprisonment was provided. The present case is also under the Essential Commodities Act.

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13. Having noticed the legal position as has been discussed by this Court in detail in ***Aditya Kumar's case (supra)***, which is squarely applicable to the facts and circumstances of this case, the prayer of both the appellants to release them on probation, is hereby accepted.

14. As such, the impugned order of sentence as passed by the trial Court is hereby set aside. It is directed that both the appellants be released on probation for a period of 02 years on furnishing requisite probation bonds in a sum of ₹50,000/- each with a surety of like amount to the satisfaction of CJM concerned, within a period of four weeks from the date of receipt of certified copy of this order. At the same time, both of them are directed to pay prosecution costs to the tune of ₹50,000/- each. The fine of ₹5,000/- each, as imposed by the trial Court, shall be converted into prosecution cost, which will be adjusted in above amount; and in case the same has not been paid, the appellants are required to pay the entire amount along with the furnishing of the bonds. It is further made clear that in case the appellants failed to make compliance of this order within stipulate time, the present order directing the appellants to release on probation, shall automatically stand vacated and in that eventuality, they will have to undergo the actual sentence as imposed by the trial Court.

15. Both these appeals stands disposed of accordingly.

16. A photocopy of this order be placed on the file of connected case.

22.04.2025 **(DEEPAK GUPTA)**
Pry **JUDGE**

Whether speaking/reasoned? *Yes*
Whether reportable? *Yes*