

101

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 10.03.2025

1. CRA-S-358-SB-2003 (O&M)

M/s Kanshi Ram Mehar Chand and others

... Appellants

Vs.

State of Punjab

... Respondent

2. CRA-S-359-SB-2003 (O&M)

M/s Bhumi Sudhar and another

... Appellants

Vs.

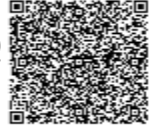
State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jugansh Goyal, Advocate for
Mr. Denesh Goyal, Advocate
for the appellants (in both appeals).

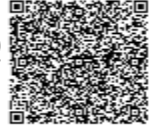
Mr. Subhash Godara, Addl. A.G., Punjab.



HARPREET SINGH BRAR, J. (ORAL)

1. This common judgment shall dispose of aforementioned two appeals preferred against the judgment of conviction dated 07.02.2003 and the order of sentence of even date passed by learned Special Judge, Moga, in Complaint bearing SC No.RT 31 of 1998 under Clause 19(i)(a) of Fertilizer (Control) Order, 1985 (for short 'FC Order') and Section 7 of Essential Commodities Act, 1955 (for short 'EC Act') read with Section 12AA of EC Act, vide which the appellants were convicted under Regulation 19(i)(a) of FC Order issued under Section 3 of EC Act and punishable under Section 7 read with Section 12AA of EC Act and were sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- each along with default mechanism.

2. In nutshell, facts of the case are that M/s Kanshi Ram Mehar Chand, Moga, a partnership firm of Jagdish Kumar and Pawan Kumar, was a dealer of manufacturing firm M/s Bhumi Sudhar Chemical Industries and appellant Ashok Kumar Jain was the responsible officer of the said manufacturing firm. On 30.06.1992, Fertilizer Inspector Harnek Singh along with Naib Singh, Soil Testing Officer, Moga-II visited the shop of M/s Kanshi Ram Mehar Chand, Moga, a partnership firm of Jagdish Kumar and Pawan Kumar and appellant Jagdish Kumar was present at the spot. The Fertilizer Inspector disclosed his identity and he drew the sample of zinc sulphate 21%. After completing the due procedure, the sample was sent to



Central Fertilizer Quality Control and Training Institute, Faridabad on 03.07.1992 and on receiving the analysis report, it was found containing only 20.43% P2 O5 instead of 21%. Hence, the complaint (*supra*).

3. After assessing the material available on record, learned trial Court convicted and sentenced the appellants, vide judgment of conviction and the order of sentence dated 07.02.2003. Aggrieved by the same, the appellants preferred aforementioned two separate appeals before this Court.

4. Learned counsel for the appellants submits that appellant No.2 Ashok Kumar Jain, in CRA-S-359-SB-2003, is more than 67 years of age and he is suffering from diabetics. The judgment passed by learned trial Court is based on conjectures and surmises. It is further submitted that appellants No.2 & 3 Jagdish Kumar and Pawan Kumar, in CRA-S-358-SB-2003, respectively and appellant No.2 Ashok Kumar Jain, in CRA-S-359-SB-2003, don't have any criminal antecedents and they are bread earners of their respective families. Learned trial Court failed to appreciate the fact that the bags, from which the samples were drawn, were stitched by the manufacturer. The appellants are facing trial for the last 32 years and therefore, learned trial Court ought to have considered the case of appellants No.2 & 3 Jagdish Kumar and Pawan Kumar, in CRA-S-358-SB-2003, respectively and appellant No.2 Ashok Kumar Jain, in CRA-S-359-SB-2003, for releasing them on probation under Section 361 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') read with Sections 3 & 4 of the



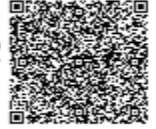
Probation of Offenders Act, 1958 (for short 'PO Act').

5. *Per contra*, learned State counsel opposes the prayer made by learned counsel for the appellants and submits that the appellants were convicted by learned trial Court based on correct appreciation of the facts and the law. As such, no interference is warranted at the hands of this Court.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that appellants No.2 & 3 Jagdish Kumar and Pawan Kumar, in CRA-S-358-SB-2003, are more than 60 years of age, respectively and appellant No.2 Ashok Kumar Jain, in CRA-S-359-SB-2003, is more than 67 years of age and they are suffering from various age related ailments.

7. Sections 3 & 4 of PO Act empowers the Courts to release the convicts, if deemed appropriate in view of circumstances of the case. Similarly, Sections 360 & 361 of Cr.P.C. [*now Sections 401 & 402 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*] also allows the Courts to release convicts on probation for good conduct in the cases and circumstances mentioned therein. A two Judge Bench of the Hon'ble Supreme Court in ***Som Dutt and others Vs. State of Himachal Pradesh, (2022) 6 SCC 722*** speaking through Justice Bela M. Trivedi, has held as under:-

“6....having regard to the fact there are no criminal antecedents against the appellants, the court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and



sentence imposed on the appellants, it is directed that the appellants shall be released on probation of good conduct.....”

8. A two Judge Bench of the Hon’ble Supreme Court in ***Lakhvir Singh Vs. State of Punjab, (2021) 2 SCC 763*** speaking through Justice Sanjay Kishan Kaul, has held as under:-

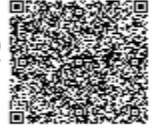
“6. We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved.”

9. Further still, a two Judge Bench of the Hon’ble Supreme Court in ***Lakahn Singh Vs. State of Madhya Pradesh, (2021) 6 SCC 100*** has opined as follows:

“15. We find that the attention of the Court was not drawn to sub Section (10) of Section 360 which provides that Section 360 will not affect the provisions of 1958 Act or other similar laws for the time being in force for the treatment, training or rehabilitation of youthful offenders. Still further, Section 4 of the 1958 Act has a non obstante clause, giving overriding effect over any other provisions of law.

16. The conjoint reading of the provisions of both the statutes, we find that the provisions of Section 360 of the Code are in addition to the provisions of the 1958 Act or the Children Act, 1960, or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders”

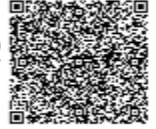
10. The Hon'ble Supreme Court in ***Bishnu Deo Shah Vs. State of West Banal, AIR 1979 SC 964*** has laid down that it is obligatory on the part of the Court to deal with a convict under the provisions of Section 360 of



Cr.P.C. (*now Section 401 of BNSS*), if he is not convicted for an offence punishable with death penalty or imprisonment for life and additionally, if he is not a previous convict. The overarching object of the provision contained in Sections 4 & 6 of PO Act and Sections 360 & 361 of Cr.P.C. (*now Sections 401 & 402 of BNSS*) is to provide an opportunity to the first time offenders to reform and not expose them in association with the hardened and habitual criminal inmates incarcerated in the judicial custody.

11. In view of the facts and circumstances of the case, both the aforementioned appeals are disposed of, in the following terms:-

- (i) The judgment of conviction dated 07.02.2003 passed by learned Special Judge, Moga, convicting the appellants, is upheld.
- (ii) The order of sentence dated 07.02.2003 passed by learned Special Judge, Moga is modified to the extent of granting the concession of probation to the appellants for good conduct.
- (iii) Appellants No.2 & 3 Jagdish Kumar and Pawan Kumar, in CRA-S-358-SB-2003, respectively and appellant No.2 Ashok Kumar Jain, in CRA-S-359-SB-2003, shall be released on probation for good conduct on furnishing personal bond of Rs.10,000/- each with a surety for the same amount within four weeks, after furnishing an undertaking to keep the peace and good behaviour for a period of one year to the satisfaction of concerned trial Court.



(iv) Appellants No.2 & 3 Jagdish Kumar and Pawan Kumar, in CRA-S-358-SB-2003, respectively and appellant No.2 Ashok Kumar Jain, in CRA-S-359-SB-2003, shall remain under the supervision of the concerned Probation Officer during the aforesaid period. In case of failure to comply with the said directions or commit breach of the undertaking rendered by them, they shall be called upon to undergo the sentence imposed upon them by learned trial Court.

12. Photocopy of this order be placed on the file of connected case.

10.03.2025
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No