

2025:PHHC:000910



**239 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRR No. 667-2016
DECIDED ON:07.01.2025**

RAMESH KUMAR

.....PETITIONER

VERSUS

BALBIR AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL.

Present: Mr. Parminder Singh, Advocate
for the petitioner.

Ms. Sweta, Advocate for
Ms. Mamta Panwar, Advocate
for respondents No.1 to 4, 6 & 7.

SANDEEP MOUDGIL. J.

1. The challenge in the present criminal revision petition is to the judgment/order dated 16.12.2015 passed by Additional Sessions Judge, Karnal whereby, however, the appeal filed against the judgment of conviction and order of sentence dated 10.01.2013 passed by Judicial Magistrate Ist Class, Karnal has been accepted partly by maintaining the impugned judgment of conviction but accused-persons have been released on probation of good conduct.

2. The factual matrix of the case is that on 28.06.2009, around 8:30 p.m., Ramesh Kumar, a servant of Bhagwan Singh, was attacked while on his way to water the fields. The assault was carried out by several individuals, including Sunil, Balbir, Subhash, Jaipal, Ram Singh, Rinku, Ram Pal, and

Nirmal. The attackers used various weapons, such as gandasi, lathis, and bricks, to inflict injuries on Ramesh Kumar, his family members, and other witnesses. The victims included Ramesh Kumar's wife Sushma, his brother Sher Singh, and other relatives. The attackers also vandalized the house of the complainant, breaking the cot and doors. Before fleeing, they threatened to kill the complainant party. The police investigated the incident, collecting evidence and arrested the accused.

3. It has been argued on behalf of the petitioner that the Appellate Court's decision to release the accused-persons on probation was flawed, as it relied on conjectures and surmises rather than solid evidence. The contention emphasizes that the accused had vigorously contested their conviction, suggesting a lack of remorse when they subsequently sought probation after their conviction was upheld. It is contended that the Appellate Court's justification for probation, considering the accused's lengthy trial experience, their role as family breadwinners, and potential career disruption was inadequate given the severity of the assault suffered by them. The accused-persons only sought probation after failing to overturn their conviction, indicating they did not acknowledge their wrongdoing. Testimonies from witnesses (PW-2 to PW-6) and medical evidence corroborated the serious nature of injuries inflicted on the petitioner and others, underscoring the gravity of the offence. The reasoning given by the Appellate Court for granting probation appears to conflict with established legal principles regarding the severity of offenses and the necessity of concrete evidence in judicial decisions.

4. Learned counsel for the respondents has asserted that the convicts, before the Appellate Court, do not contest the merits of the conviction judgment dated 10.01.2013. Instead, they seek to challenge only

the sentencing order on compassionate grounds. Furthermore, it has been argued that the prosecution has failed to establish that the accused acted with a common intention to assault the complainant, resulting in injuries.

6. Heard learned counsel for the respective parties.

7. The main limb of contention of learned counsel for the petitioner is that the Appellate Court has released the accused-persons on probation based on their prolonged trial experience and their roles as primary earners for their families. This perspective aligns with judicial precedents where courts have recognized the hardships faced by defendants as valid considerations for probation. For instance, in a Delhi High Court case, the court noted that being the sole breadwinner was a substantial factor in deciding to grant probation, despite upholding the conviction. The Appellate Court's decision reflects a broader judicial trend that weighs personal circumstances, such as family responsibilities and prior conduct, heavily in favor of granting probation rather than imposing custodial sentences. This approach aims to balance justice with compassion, particularly in cases where incarceration may disproportionately impact innocent family members

9. There is no gain saying that the relevant statutory provisions and the principles underlying and pertaining to release of offenders on probation, instead of straightaway sentencing them, need to be kept in mind by the Courts while passing sentencing orders.

10 Probation of Offenders Act, 1958 (for short "Act") was enacted in order to save offenders in appropriate cases from being habitual offenders by providing them with a chance to reform rather than dumping into jails. For ready reference, Section 4 of Act is reproduced herein below:

Section 4 in The Probation of Offenders Act, 1958

4. Power of court to release certain offenders on probation of good conduct.

(1) When any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court by which the person is found guilty is of opinion that, having regard to the circumstances of the case including the nature of the offence and the character of the offender, it is expedient to release him on probation of good conduct, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him at once to any punishment direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years, as the court may direct, and in the meantime to keep the peace and be of good behaviour: Provided that the court shall not direct such release of an offender unless it is satisfied that the offender or his surety, if any, has a fixed place of abode or regular occupation in the place over which the court exercises jurisdiction or in which the offender is likely to live during the period for which he enters into the bond.

(2) Before making any order under sub-section (1), the court shall take into consideration the report, if any, of the probation officer concerned in relation to the case.

(3) When an order under sub-section (1) is made, the court may, if it is of opinion that in the interests of the offender and of the public it is expedient so to do, in addition pass a supervision order directing that the offender shall remain under the supervision of a probation officer named in the order during such period, not being less than one year, as may be specified therein, and may in such supervision order, impose such conditions as it deems necessary for the due supervision of the offender.

(4) The court making a supervision order under sub-section (3) shall require the offender, before he is released, to enter into a bond, with or without sureties, to observe the conditions specified in such order and such additional conditions with respect to residence, abstention from intoxicants or any other matter as the court may, having regard to the particular circumstances, consider fit to impose for preventing a repetition of the same offence or a commission of other offences by the offender.

(5) The court making a supervision order under sub-section (3) shall explain to the offender the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to each of the offenders, the sureties, if any, and the probation officer concerned.”

11. Objectives and principles of criminal law as envisioned in the provision *ibid*, apart from deterrence against committing crime against society, are *inter-alia* focused on the reformation of offenders, which inheres the concept of probation. Modern criminal justice system often aims to balance punishment with rehabilitation, emphasizing the potential for positive change in individuals who have committed crime. The goal of criminal law extends beyond mere punishment. While punishment serves to deter and hold individuals accountable for their actions, there is a growing recognition of the importance of addressing the underlying factors that contribute to criminal behaviour. This perspective emphasizes the potentials of offenders to reform and reintegrate into society as law-abiding citizens. Probation is one of the mechanisms used to achieve this reformation objective. In certain cases, certain offenders may be asked to remain under community supervision rather than being incarcerated. During such probation period, the offender can be put to follow certain conditions, such as regular reporting to a probation officer, participating in counselling or treatment programs and maintaining employment or education. The aim is to provide support, guidance and opportunities for the offender and to address the root causes of their criminal behaviour and develop positive life skills. Close monitoring and guidance provided during probation can help the offender make positive changes in their life and reduce the likelihood of re-offending. Overall, the concept of focusing on reformation and using alternatives to imprisonment, such as release on probation, reflects a more holistic approach of criminal justice that takes into account the potential for positive change and the overall betterment of both the individual and society.

12. Probation can thus also be termed as an alternative form of punishment envisaged within the criminal justice system. An assessment of

offender's ties to the community, such as family, employment, and stable housing ought to be carried out. Strong community ties can indicate a support system that can help prevent further criminal activity. The goal of probation is to offer an alternative to incarceration that addresses the individual needs of the offender while maintaining public safety.

13 Admittedly, in the present case the accused-persons are the sole bread earners of their family. Grudges and grievances should be relinquished through forgiveness and understanding. Open and honest discourse, tempered by empathy and gentleness, is essential. Shared responsibilities and collaborative efforts foster a sense of unity and cooperation. Furthermore, quality time spent together, punctuated by joy and laughter, strengthens familial bonds. Ultimately, a spirit of gratitude and appreciation for one another's presence and contributions is indispensable to preserving peaceful and harmonious family relations.

14. Keeping the aforesaid in mind, I am thus of the view that the release of the convicts on probation, as in the present case, can indeed serve the dual purpose of deterrence and reformation. By allowing release on probation, the aim herein is to deter their future criminal conduct, while also providing an opportunity for reform and rehabilitation.

15. In view of afore-said factual aspects and the discussions made hereinabove, this Court does not find any merit in the present petition and the same is dismissed.

07.01.2025
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No