

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

**CRA-S-2769-SB-2009 (O&M)
Date of Decision: 05.03.2025**

GURMAIL SINGH AND OTHERS

...Appellants

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Amrit Singh Kang, Advocate as Legal Aid Counsel
for the appellants.

Mr. Rishabh Singla, AAG Punjab.

Mr. Nitesh Sharma, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Present appeal has been preferred by the appellants against the judgment of conviction and order on quantum of sentence dated 23.10.2009 passed by learned Additional Sessions Judge (A), Fast Track Court, Sangrur vide which the appellants have been convicted under Sections 323/149 of Indian Penal Code and sentenced as mentioned below:

Offence under Section	Sentence	Fine	Sentence in default of payment of fine
323/149 of Indian Penal Code	Rigorous imprisonment for one year each	-	-

2. Learned Legal Aid Counsel for the appellants *inter alia* contends that learned trial Court has not taken into consideration that the appellants have been falsely implicated as Jaura Singh and Karamjit Singh wanted to take possession of the land from appellant-Mukand Singh and no injury has been attributed to the appellant-Mukand Singh and Darbara Singh. Even the presence of the complainant at the time of occurrence is doubtful. This is further strengthened from the fact that complainant has not suffered even a scratch. The entire case of the prosecution is based upon the case set up by the complainant-Karamjit Singh. Further, the medical evidence remains



CRA-S-2769-SB-2009 (O&M)

-2-

unproved as the concerned doctor has not been examined and all the appellants have been implicated with the aid of Section 149 of Indian Penal Code. Learned counsels further submit that the petitioners are not involved in any other case and prayer is made that petitioners may be released on probation of good conduct.

3. *Per contra*, learned State counsel opposes the prayer made by learned counsel for the appellants and submits that the appellants have been convicted by the learned trial Court based on correct appreciation of the facts and the law, as such interference by this Court is not warranted.

4. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that FIR was registered on 30.08.2004 and the appellants have been suffering the agony of trial since the last more than 20 years and all the appellants are more than 60 years of age of age.

5. Section 3 and 4 of the Probation of Offenders Act, 1958 (hereinafter to be referred to as 'the Act') empowers the Courts to release the convicts if deemed appropriate in view of circumstances of the case. Similarly, Sections 360 and 361 of the Cr.P.C 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 petitioners, 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 petitioners, it is directed that the petitioners shall be released on probation of good conduct.....”



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.”

Further still, a two Judge Bench of the Hon'ble Supreme Court in ***Lakahnlal @ 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”

6. 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 the Cr.P.C., 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 Section 4 and 6 of the Act and Section 360 and 361 of Cr.P.C. is to provide an opportunity to the first



CRA-S-2769-SB-2009 (O&M)

-4-

time offenders to reform and not expose them in association with the hardened and habitual criminal inmates incarcerated in the judicial custody.

7. In view of the facts and circumstances of the case, the instant petition is disposed of, in the following terms:-

1. The judgment of conviction dated 23.10.2009 passed by the learned Additional Sessions Judge (A), Fast Track Court, Sangrur, is upheld.

2. The order of sentence dated 23.10.2009 is modified to the extent of granting the concession of probation to the appellants for good conduct.

3. The appellants shall be released on probation for good conduct on furnishing personal bonds of Rs.10,000/- each with a surety for the same amount, after furnishing an undertaking to keep the peace and good behaviour for a period of one year to the satisfaction of the concerned trial Court, within four weeks.

4. The appellants shall remain under the supervision of the concerned Probation Officer during the aforesaid period. If the appellants fail to comply with the said directions or commit breach of the undertaking rendered by them, then they shall be called upon to undergo the sentence imposed upon them by the learned trial Court.

8. High Court Legal Services Committee is directed to pay the honorarium to the Legal Aid Counsel as per rules.

(HARPREET SINGH BRAR)
JUDGE

05.03.2025
Ajay Goswami

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>