



2025:DHC:5249



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Judgment delivered on: 04.07.2025*+ **CRL.A. 549/2007 & CRL.M.A. 14125/2025**

AJAY KUMAR

.....Appellant

Through: Mr. Sanjay Mani Tripathi,  
Advocate.

versus

STATE

.....Respondent

Through: Mr. Naresh Kumar Chahar,  
APP for State.**CORAM:****HON'BLE DR. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****DR. SWARANA KANTA SHARMA, J**

1. By way of the present appeal, the appellant seeks to challenge the judgment dated 24.07.2007 and order on sentence dated 02.08.2007, passed by the learned Additional and Sessions Judge, Delhi [hereafter '*Trial Court*'] in Sessions Case No. 81/2006, arising out of FIR No. 302/2003, registered at Police Station Moti Nagar, Delhi.

2. By way of the impugned judgment and order, the learned Trial Court was pleased to convict the appellant herein for the offences punishable under Sections 392/394/34 and Section 397 of Indian Penal Code, 1860 [hereafter '*IPC*'] wherein the appellant was



sentenced to rigorous imprisonment for a period of 03 years and payment of fine of ₹2,000/- (in default, simple imprisonment for 02 months) for offence under Sections 392/34 of IPC, rigorous imprisonment for a period of 04 years and 06 months and payment of fine of ₹2,000/- (in default, simple imprisonment for 02 months) for offence under Section 394 of IPC, and rigorous imprisonment for a period of 07 years for offence under Section 397 of IPC.

3. Briefly stated, facts of the present case are that on 22.07.2003, Shri Bhushan Bhandari, resident of Karampura, Delhi, had been robbed of ₹7,50,000/-, which his accountant had withdrawn earlier the same day from Bank of Punjab, West Punjabi Bagh Branch, Delhi. It was alleged that two young men had entered his office, one of whom had brandished a knife while the other had thrown red-chilli powder into the complainant's eyes, thereby facilitating the robbery. The assailant carrying the cash bag had fled, whereas the complainant had apprehended the other assailant, later identified as Dalip Yadav. During interrogation, Dalip Yadav had disclosed that the robbery had been planned in conspiracy with household servant Mr. 'S' (a juvenile) and two other individuals, namely Ajay Kumar (the present appellant) and Parmod. Dalip Yadav and Mr. 'S' had been handed over to the police, the complainant had been medically examined at MGS Hospital, and the present FIR had been registered.

4. Subsequently, after the conclusion of trial, the learned Trial Court convicted the appellant for offences punishable under Sections 392/394/34 and Section 397 of IPC.



5. During the course of arguments, learned counsel for the appellant submitted that without pressing the appeal on merits insofar as the conviction under Section 392/34 of IPC and Section 397 of IPC is concerned, the appellant may be considered for grant of benefit of probation. It is submitted that the appellant is a first-time offender and has already undergone a substantial period of custody, i.e. about five and a half years, and has earned remission of about six months. It is further argued that although there is an allegation regarding the appellant being in possession of a knife at the time of the incident, there is no recovery of any weapon from the appellant, and in these circumstances, a lenient view may be taken. The learned counsel for the appellant has also submitted that the appellant has deep roots in society and undertakes to maintain peace and good behaviour in the future. The learned counsel has placed reliance on Sections 3 and 4 of the Probation of Offenders Act, 1958, and prays that the sentence awarded to the appellant may be modified by extending the benefit of probation.

6. The learned APP for the State, while opposing the prayer for probation, submits that the gravity of the offence does not warrant the benefit of probation being granted. It is, however, not disputed that the appellant has been in custody for a considerable period, is a first-time offender, and has no previous involvement in any criminal case.

7. This Court has **heard** the learned counsel for the appellant as well as learned APP for the State and has gone through the material available on record.



8. Since the learned counsel for the appellant restricted his arguments only to the question of grant of benefit of probation, this Court shall not go into the merits of the case insofar as the conviction of the appellant under Sections 392, 394 and 397 of IPC is concerned.

9. The relevant portion of the order on sentence dated 02.08.2007 passed by the learned Trial Court is as under:

“I have given thoughtful consideration on the matter. Considering the seriousness of the offence, I am of the opinion that the ends of justice shall suffice if accused Parmod is sentenced RI for 3 with fine of Rs.2000/- and in default SI for two months for the offence U/s 392/34 IPC.

Accused Parmod is further sentenced to RI for 4 years and 6 months with fine of Rs.2000/- in default SI for two months for offence U/s 394/34 IPC.

Accused Dalip is sentenced to RI for 3 years with fine of Rs.2000/- and in default SI for two months for the offence U/s 392/34 IPC.

Accused Dalip is further sentenced to RI for 4 years and 6 months with fine of Rs.2000/- and in default SI for two months for the offence U/s 394/34 IPC.

The accused Ajay is sentenced RI for 3 years with fine of Rs.2000/- and in default SI for two months for the offence U/s 392/34 IPC.

The accused Ajay is also sentenced to RI for 4 years and 6 months with fine of Rs.2000/- and in default SI for two months for the offence U/s 394/34 IPC.

The accused Ajay is also sentenced to RI for 7 years for the offence U/s 397 IPC.

All the sentences shall run concurrently and the accused would get benefit U/s 428 Cr.P.C. for the period of custody already undergone...”



10. The issue for consideration before this Court is whether the appellant is entitled to the benefit of probation as envisaged under the Probation of Offenders Act, 1958. For ready reference, Section 3 of the said Act is set out below:

“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...”

11. The powers conferred upon Courts under Sections 3 and 4 of the Probation of Offenders Act, 1958 are discretionary in nature and are to be exercised keeping in mind the character of the offender, the nature of the offence, and the overall circumstances of the case. The Hon’ble Supreme Court, in ***Rajendra Pralhadrao Wasnik v. State of Maharashtra***: (2019) 12 SCC 460, has reaffirmed the settled principle that while considering probation, the Court must assess the possibility of reform and rehabilitation of the offender.

12. Moreover, the purpose of the Probation of Offenders Act, has been emphasized by the Hon’ble Supreme Court in ***Lakhvir Singh v. State of Punjab***: 2021 SCC OnLine SC 25, wherein it was held:



“...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...”

13. Insofar as the issue of award of minimum sentence of 07 years for offence under Section 397 of IPC viz.-a-viz. grant of benefit of probation is concerned, this Court notes that a similar issue was examined by the Hon’ble Supreme Court in case of **Lakhvir Singh etc. v. The State of Punjab & Ors.**: (2021) 2 SCC 763, wherein it was held that the benefit of probation under the Act is not excluded by the provisions of the mandatory minimum sentence under Section 397 of IPC. The relevant portion of the decision is set out below:

“11. The legal position insofar as invocation of Section 4 is concerned has been analysed in **Ishar Das vs. State of Punjab** elucidating that nonobstante clause in Section 4 of the Act reflected the legislative intent that provisions of the Act have effect notwithstanding any other law in force at that time. The observation in **Ramji Missar** (supra) was cited with approval to the effect that in case of any ambiguity, the beneficial provisions of the Act should receive wide interpretation and should not be read in a restricted sense.

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13. Even though, Section 5(2) of the Prevention of Corruption Act, 1947 (hereinafter referred to as ‘the PC Act’) prescribes a minimum sentence of imprisonment for not less than 1 year, an exception was carved out keeping in mind the application of the Act. In **Ishar Das** (supra), this Court noted that if the object of the legislature was that the Act does not apply to all cases where a minimum sentence of imprisonment is prescribed, there was no reason to specifically provide an exception for Section 5(2) of the PC Act. The fact that Section 18 of the Act does not include any other such offences where a mandatory minimum sentence has been prescribed suggests



that the Act may be invoked in such other offences. A more nuanced interpretation on this aspect was given in *CCE vs. Bahubali*. It was opined that the Act may not apply in cases where a specific law enacted after 1958 prescribes a mandatory minimum sentence, and the law contains a non-obstante clause. Thus, the benefits of the Act did not apply in case of mandatory minimum sentences prescribed by special legislation enacted after the Act. It is in this context, it was observed in *State of Madhya Pradesh vs. Vikram Das* (Supra) that the court cannot award a sentence less than the mandatory sentence prescribed by the statute. **We are of the view that the corollary to the aforesaid legal decisions ends with a conclusion that the benefit of probation under the said Act is not excluded by the provisions of the mandatory minimum sentence under Section 397 of IPC, the offence in the present case.** In fact, the observation made in *Joginder Singh vs. State of Punjab* are in the same context.

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15. We, thus, release the appellants on probation of good conduct under Section 4 of the said Act on their completion of half the sentence and on their entering into a bond with two sureties each to ensure that they maintain peace and good behaviour for the remaining part of their sentence, failing which they can be called upon to serve that part of the sentence.”

(Emphasis added)

14. In the present case, the appellant has already undergone a substantial period of judicial custody. He is stated to be a first-time offender, having no previous involvement in any criminal activity. The learned counsel for the appellant has also submitted that there was no recovery of any weapon from the appellant and that he has deep roots in society with family responsibilities.

15. Having regard to the facts and circumstances of the case, including the period of custody already undergone by the appellant,



the nature of the offence, and considering the possibility of his reformation, this Court is of the opinion that the appellant can be granted the benefit of probation under Sections 3 and 4 of the Probation of Offenders Act.

16. Accordingly, while maintaining the conviction of the appellant under Sections 392/34, 394 and 397 of IPC, the sentence awarded *vide* order dated 02.08.2007 is modified to the extent that the **appellant is directed to be released on probation** on furnishing a bond in the sum of ₹25,000/- (for keeping peace and good behaviour) with one surety of like amount to the satisfaction of the learned Trial Court, within a period of 15 days from date. The appellant shall remain under the supervision of the Probation Officer concerned for a period of one (01) year, and shall report before the Probation Officer once every month. It is made clear that in the event of any breach of the conditions of probation or involvement in any other offence during this period, the benefit granted under this order shall stand revoked, and the appellant shall be liable to undergo the remaining portion of the substantive sentence as awarded by the learned Trial Court.

17. This Court while passing this order has taken note of the fact that the appellant herein had faced trauma of criminal trial for about 22 years as the FIR in this case was registered in the year 2003 when he was arrested and remained in jail. Thereafter, the appeal has been pending since the year 2007. The pendency of criminal trial or an appeal always weighs heavily on the mind of a person, unsure of his





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future. Since in the last 22 years, no case has been registered against him, he has reformed himself, it entitles him to benefit of being released on grant of probation, especially when the unexpired portion of his sentence is only of about 10 months.

18. Since the present appeal has not been pressed on merits with respect to the conviction, this Court has not interfered with the findings of conviction recorded by the learned Trial Court in its judgment dated 24.07.2007.

19. Accordingly, the present appeal stands disposed of in the above terms. Pending application, if any, also stands disposed of.

20. Let a copy of this judgment be forwarded to the learned Trial Court along with the Trial Court Record for information and necessary compliance.

21. The judgment be uploaded on the website forthwith.

**DR. SWARANA KANTA SHARMA, J**

**JULY 04, 2025/vc**