



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 5855/2024

1. Ganesh S/o Rajeng Ninama, Aged About 28 Years, R/o Jhupel, Police Station Sadar, Dist. Banswara, Rajasthan. (At Present Lodged In Central Jail, Udaipur)
2. Laxman S/o Rakma Charpota, Aged About 27 Years, R/o Jambudipada Jhupel, Police Station Sadar, Dist. Banswara, Rajasthan. (At Present Lodged In Central Jail, Udaipur)
3. Ganesh S/o Dhan Ji, Aged About 28 Years, R/o Jam, Budipada Jhupel, Police Station Sadar, Dist. Banswara, Rajasthan. (At Present Lodged In Central Jail, Udaipur)
4. Bansu S/o Ravji Charpota, Aged About 33 Years, R/o Jhupel, Police Station Sadar, Dist. Banswara, Rajasthan. (At Present Lodged In Central Jail, Udaipur)

-----Petitioners

Versus

State Of Rajasthan, Through Pp

-----Respondent

For Petitioner(s) : Mr. Bhagat Dadhich.

For Respondent(s) : Mr. Vikram Singh Rajpurohit, PP.

**HON'BLE MR. JUSTICE ARUN MONGA
Order(Oral)**

29/08/2024

1. Challenge herein is to the judgment dated 13.03.2024 by the learned Additional Sessions Judge, Banswara, in Criminal Appeal No.106/2018 (CIS No.106/2018). The impugned judgment though confirmed the conviction of the petitioners under sections 457 and 380 of IPC awarded by the learned Judicial Magistrate, Banswara, in Criminal Complaint No.71/2017, dated 20.11.2018, but modified the sentence of 2 years of simple imprisonment with Rs.1,000 fine and 15 days of imprisonment in default thereof, and instead ordered their release on probation with a condition that each petitioner must deposit Rs. 10,000/- as prosecution expenses (totaling Rs. 40,000/-) and furnish bail bonds of Rs. 10,000/- each with condition of good behavior for one year.

2. Relevant factual background first. The complainant, Lalit Soni, filed FIR No. 331/2005 at Police Station Kotwali under Sections 457 and 380 of the IPC, alleging that on 14.02.2005 at around 7 P.M., he closed his shop and went to his village, Navagoav. The next morning at around 9:30 A.M., he found that someone had broken the shop's back wall and stolen various items, including a watch, DVD, CD, and speakers. Investigation ensued, petitioners were apprehended and tried.

3. On 20.11.2018, the Trial Court convicted the petitioners under Section 457 IPC, sentencing them to two years of simple imprisonment and a fine of Rs. 1,000/-, with an additional 15 days of imprisonment in default of payment. A similar sentence was imposed under Section 380 IPC. The petitioners appealed this decision. The Appellate Court partially allowed the appeal, directing release of the petitioners on probation subject to deposit Rs. 10,000/- each as prosecution expenses and furnish a bail bond of Rs. 10,000/- each with further condition of good behavior for one year. While confirming the conviction, the Appellate Court, by order dated 13.03.2024, quashed the sentence imposed by the Judicial Magistrate and thus modified the earlier order.

4. However, being poor, none of the petitioners have been either pay Rs.10,000/- each or manage the bail bonds. They continue to languish in jail. Hence the instant petition.

5. Heard.

6. Learned counsel for the petitioner would contend that the petitioners are innocent and actually poor daily wagers/laborers. They do not belong to Rajasthan and left their native state in



search of work. They have been thus unable to comply with the Appellate Court's order dated 13.03.2024 to pay Rs. 10,000/- each in court expenses totaling Rs. 40,000/- and furnish and bail bonds.

6.1. The petitioners are uneducated and unaware of legal procedures, making it difficult for them to arrange for the bail bonds and deposit required amount. As a result, the Trial Court issued an arrest warrant on 05.08.2024, leading to their arrest and subsequent imprisonment.

7. Learned Public Prosecutor opposes the submissions made by learned counsel for the petitioners and seeks dismissal of the petition. He would submit that petitioners are convicts and must undergo the imprisonment as awarded to them.

6. 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 of 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."

7. There is no gainsaying 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.

8. In this context, reference may be had to a judgment rendered by me in similar circumstances, when I was a puisne Judge in Punjab and Haryana High Court, in a case titled **Nasri Vs. State of Haryana.: CRM-A-38-MA-2017**, relevant whereof, for ready reference, is reproduced as below :-

"Probation can thus also be termed as an alternative form of punishment envisaged within the criminal justice system. In my opinion, following principles or what can be termed as potential benefits of release on probation ought to be kept in mind by the learned sentencing Courts below for exercise of judicial discretion to grant probation, provided a deserving case is made out.

a) Nature of the Offense: The severity and type of offense committed by the individual are important considerations. Less serious offenses, such as non-violent crimes or violent but arising out of self defense or first time offenses, might make an individual more eligible for probation.

b) Individualized Justice: Before grant of the benefit of release on probation, one has to take into consideration the individual circumstances of the offender viz., the nature of the crime vis-a-vis the

potential for positive change. It allows for tailored sentencing that considers the unique needs and characteristics of the offender, promoting a more just and proportionate response to the offense.

c) Criminal History: A convict's prior criminal history must be assessed to determine if they have a pattern of repeat offenses. A history of violent or serious crimes might make an individual less likely to be granted probation.

d) Rehabilitation Potential: The offender's willingness and potential to rehabilitate play a significant role. If there's evidence that the individual is committed to changing their behavior, participating in counseling, and addressing the underlying causes of their criminal activity, they ought to be considered for probation.

e) Compliance with Probation Terms: Convicts on probation are required to follow specific conditions, such as regular reporting to a probation officer, avoiding criminal activity, and attending counseling or rehabilitation programs. A person's willingness and ability to comply with these terms would influence their eligibility for probation.

f) Preventing Recidivism:- Probation, as an alternative to incarceration, can indeed help prevent first-time offenders from becoming habitual or "hardened" criminals. By providing rehabilitation and support services, probation aims to address the underlying factors that contribute to criminal behaviour, giving offenders a chance to change their ways.

g) Community Ties: 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.

h) Risk to Public Safety: The safety of the community is a crucial factor. Assessments are made to determine whether releasing an individual on probation poses a low risk of committing new offenses or harming others.

i) Reducing Overcrowding:- Probation can help alleviate the overcrowding of jails and prisons. Non-violent offenders who are eligible for probation can be kept under community supervision, freeing up space in correctional facilities for more serious offenders.

j) Promoting productivity:- By allowing offenders to remain in the community and engage in productive activities such as work, education, or community service, probation can contribute to making them productive members of society. This, in turn, can lead to them contributing as taxpayers instead of being a burden on the State.

k) Second chance and Reformation:- Probation offers a second chance to offenders by allowing them to avoid imprisonment and providing an opportunity for reformation. Through counselling, treatment, and supervision, offenders can address the root causes of their criminal behaviour and work towards positive change.

l) Reintegration into Society: Probation allows offenders to maintain ties with their families, jobs and communities, which can enhance their chances of successful reintegration after their sentence. This reduces the likelihood of recidivism and helps break the cycle of criminal behaviour.

m) Compensation to the aggrieved: Court can even ask the offender to pay compensation (by way of penalty) to the aggrieved person as means of retribution or penance as a pre condition of release on probation.

n) Probation Officer Assessment: Probation officer may be asked by a court to conduct an assessment of the offender to gather information about their background, behavior, and potential for rehabilitation. Such an assessment would help take an informed decision regarding probation.

o) Judicial Discretion: In the end, depending on facts and circumstances of the case, it is the discretion of court to determine whether to grant probation. It shall consider all relevant factors and balance the interests of rehabilitation, public safety, and justice in the decision-making process. The goal of probation is to offer an alternative to incarceration that addresses the individual needs of the offender while maintaining public safety."

9. 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 potential of offenders to reform and reintegrate into society as law-abiding citizens. Probation is one of the mechanisms used to achieve this reformation objective.

10. 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 reoffending.

11. 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. Keeping the aforesaid in mind, instant petition allowed. Given that the petitioners suffer from sheer penury, the appellate order dated 13.03.2024 is modified to the extent that pre condition to deposit prosecution expenses of Rs.10,000/- by each of petitioners (total Rs. 40,000/-) is set aside. The petitioners are directed to be released forthwith on their furnishing of personal bond to the satisfaction of the Jail Superintendent, Central Jail, Udaipur without insisting for the deposit of amount of Rs.10,000/- each.

13. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA),J

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Whether fit for reporting- Yes / No