

PUNJAB AND HARYANA HIGH COURT

SINGLE BENCH

(Before : Manisha Batra, J.)

M/S THAKUR DASS MURARI LAL AND OTHERS

Vs.

STATE OF PUNJAB

Criminal Appeal (SB) No. 1462 of 2005 (O&M)

Decided on : 24-07-2026

A. Probation of Offenders Act, 1958 — Sections 4 and 6 — Essential Commodities Act, 1955 — Sections 7, 12AA — Benefit of probation, grant of — Appellants convicted for contravention of Fertilizer Control Order under EC Act, sentenced to two years' RI — Litigation pending for nearly 30 years, substantive sentence already undergone — Held, Probation Act is a reformative measure aimed at preventing conversion of first offenders into hardened criminals through jail association, and its beneficial provisions merit liberal construction — Non-obstante clause in S. 4 overrides other laws — Sentence of imprisonment modified; appellants released on probation for one year subject to bond and surety, with fine sustained; conviction upheld. [Paras 4-11]

B. Probation of Offenders Act, 1958 — Object and scope — Probation is reformative, not retributive, in penological philosophy — Intended to rehabilitate offenders without incarceration's stigma and to prevent contamination by association with hardened criminals; also serves the secondary purpose of decongesting jails. [Para 4]

JUDGMENT

Manisha Batra, J.-The instant appeal has been filed against the judgment of conviction and order on quantum of sentence, both dated 23.08.2005, passed by the Court of learned Special Judge, Kapurthala in Complaint bearing No. 5 dated 30.08.1996, filed under Sections 7 and 12 AA of the Essential Commodities Act, 1955 read with Clause 19 of the Fertilizer Control Order, 1985, whereby the appellants were held guilty for commission of aforementioned offence and appellants No. 2 and 3 were sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of Rs.5,000/-each with default clause, whereas appellant No. 1, being partnership firm, was directed to pay a fine of Rs.5,000/-.

2. At the very outset, learned counsel for the appellants has submitted that he does not press the grounds as taken in the appeal and restricts his arguments to the extent that benefit of probation be granted to the appellants. The present appeal has been pending since the year 2005. The appellants No. 2 and 3, being proprietor of appellant No. 1/firm, have been facing rigors of litigation from the last about 30 years. They have already undergone substantive portion of their sentence. They are leading happy and peaceful life with their respective families. Hence, learned counsel for the appellants has urged that they are entitled to the benefit of probation. Learned counsel for the appellants has relied upon the order dated 04.03.2025 passed by this Court in CRA-S-436-SB-2004, titled as M/s Vishnu Trading and others v. State of Punjab as well as upon order dated 10.03.2025 passed by this Court in CRA-S-358-SB-2003, titled as M/s Kanshi Ram Mehar Chand and others v. State of Punjab, whereby in similar circumstances, the appellants, who were convicted and held guilty for commission of offence punishable under Section 7 of the Essential Commodities Act, 1955, were extended benefit of probation. In view thereof, the sole consideration before this Court is as to whether the prayer made by the appellants for extending benefit of probation can be accepted or not?

3. Learned State counsel has not raised any serious objection to the prayer made by the appellants.

4. Before considering the prayer made by the appellants to release them on probation, let us have a look on the law on this point. The aims and object of the Probation Act came to be decided by Hon'ble Apex Court in case **Jugal Kishore Prasad v. State of Bihar, 1972 AIR (SC) 2522**. Hon'ble Supreme Court while considering the scope of the Probation Act had held as under:-

"The Probation of Offenders Act was enacted in 1958 with a view to provide for the release of offenders of certain categories on probation or after due admonition and for matters connected therewith. The object of the Act is to prevent the conversion of youthful offenders into obdurate criminals as a result of their association with hardened criminals of mature age in case the youthful offenders are sentenced to undergo imprisonment in jail. The above object is in consequence with the present trend in the field of penology, according to which effort should be made to bring about correction and reformation of the individual offenders and not to resort to retributive justice. Modern criminal jurisprudence recognizes that no one is a born criminal and that a good many crimes are the product of socio-economic milieu. Although not much can be done for hardened criminals, considerable stress has been laid on bringing about reform of young offenders not guilty of very serious offences and of preventing their association with hardened criminals."

5. Reliance can also be placed upon **Isher Das v. State of Punjab, AIR 1972 Supreme Court 1295** and **Arvind Mohan Sinha v. Amulya Kumar Biswas and others, 1974 AIR (SC) 1818**, wherein Hon'ble Supreme Court had taken the similar view. Relevant paragraph of Arvind Mohan Sinha's case (supra) reads as under:-

"The Probation of Offenders Act is a reformatory measure and its object is to reclaim amateur offenders who, if spared the indignity of incarceration, can be usefully rehabilitated in society. A jail term should normally be enough to wipe out the stain of guilt but the sentence which the society passes on convicts is relentless. The ignominy commonly associated with a jail term and the social stigma which attached to convicts often render the remedy worse than the disease and the year purposes of punishment stands in the danger of being frustrated. In recalcitrant cases punishment has to be deterrent so that others similarly minded may warn themselves of the hazards of taking to a career of crime. But the novice who strays into the path of crime ought, in the interest of society, be treated as being socially sick. Crimes are not always rooted in criminal tendencies and their origin may lie in psychological factors induced by hunger, want and poverty. The Probation of Offenders Act recognises the importance of environmental influence in the commission of crimes and prescribes a remedy whereby the offender can be reformed and rehabilitated in society. An attitude of social defiance and recklessness which comes to a convict who, after a jail term, is apt to think that he has no more to lose or fear may breed a litter of crime. The object of the Probation of Offenders Act is to nip that attitude in the bud. Winifred A Sikin describes probation as a system which provides a means of re-education without the necessity of breaking up the offender's normal life and removing him from the natural surroundings of his home. (English Juvenile Courts (1938) page 162) Edwin R. Sutherland raises it to a status of a convicted offender. (Principles of Criminology, 4th Edn. (1947) page 383)."

6. In view of the ratio of law as laid down in aforecited judgments, the question that arises before this Court is that as to whether the appellants are entitled to the benefit of probation or not ? In the considered opinion of this Court, the answer to this question must be in the affirmative.

7. The object underlying the provisions of Sections 4 and 6 of the Probation of Offenders Act, 1958 (for brevity "the Probation Act") and Sections 360 & 361 of Cr.PC, is that the first offenders be not sent to jail for the commission of less serious offences, on account of grave risk to their attitude to life to which they are likely to be exposed as a result of their association with the hardened and habitual criminal inmates of the jail. Their stay in jail in such circumstances might well attract them towards a life of crime instead of reforming them. This would clearly cause more harm than to reform them, and for that reason, it would perhaps also be to an extent prejudicial to the larger interests of the society as a whole. Perhaps that was the reason that the mandatory injunction against imposition of sentence of imprisonment has been embodied in Section 6 of the Probation Act. This mandate is inspired by the desire to keep the young delinquent/first offenders away from the possibility of association or close contact with hardened criminals and their evil influence. Therefore, these beneficial provisions have to be liberally construed.

8. The sole intention of the legislature in passing probation laws is to give person of a particular type of chance of reformation, which they would not get if sent to prison. The types of persons, who are in the contemplation of the legislature under the probation law are those who are not hardened or dangerous criminals, but those who have committed offences under some momentary weakness of character or some tempting situation. By placing the offender on probation, the Court saves him from the stigma of jail life and also from the contaminating influence of hardened prison inmates. Probation also serves another purpose, which is quite significant though of secondary importance. It helps in eliminating overcrowding in jails by keeping many offenders away from the prison. Section 360 Cr.P.C. deals with order to release the accused on probation of good conduct or after admonition, whereas Section 361 Cr.P.C. provides that "where in any case the Court could have dealt with an accused person under Section 360 or under the provisions of the Probation Act, but has not done so, it shall record in its judgment the special reasons for not having done so."

9. Therefore, the conjoint and meaningful reading of the beneficial provisions of the Probation Act would reveal that non-obstante clause contained in Section 4 that points to the conclusion that the provisions of this Section would have overriding effect, shall prevail if the conditions described therein are fulfilled. Meaning thereby, the Court has the ample power to release the first offender of minor offences on probation, keeping into focus the nature & manner of the crime, age of the offender, other antecedents and attending circumstances of the offence instead of committing him to jail.

10. Likewise, Section 4 of the Probation Act postulates that 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 the 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. The learned State counsel has acknowledged the factual matrix of the case and legal position.

11. Therefore, taking into consideration the agony and trauma, which the appellants have undergone during protracted trial and appeal, nature of offence, totality of other facts & circumstances emanating from the record as well as the ratio of law laid down by this Court in the aforecited judgments, this Court is of the considered opinion that no useful purpose would be served by sending the appellants again into jail to serve out the remaining period of sentence and instead of sending them to prison, they be released on probation. Accordingly, it is directed that appellants No. 2 and 3 be released on probation on their furnishing personal bond (within one month) in the sum of Rs.25,000/- with one surety of the like amount to the satisfaction of the trial Court, subject to the conditions that they would keep the peace and be of good behavior, for a period of one year from the date of passing of this order and shall disclose their present addresses and phone numbers before the trial Court in the form of an affidavit at the time of furnishing bonds. Needless to mention that in case, they are found to be

indulged in any illegal activities, the sentence awarded to them by the trial Court shall stand revived. However, the quantum of fine, as awarded by the trial Court, shall remain intact and shall be paid by all the three appellants.

12. As such, the instant criminal appeal is hereby dismissed on merits and the impugned judgment of conviction and order of sentence of fine are maintained. However, the order of sentence is accordingly modified to the extent and in the manner depicted herein above.

13. Needless to mention that natural consequences & compliance will follow accordingly.