

SC 14/2023
STATE Vs. FAIM @ NAIM AHMMED
FIR No. 606/2022 (Bhajan Pura)

10.02.2026

Present: Sh. Abhishek Pandey, Ld. Addl. PP for the State.
Convict is produced from JC.
Md. Saleem and Sh. Salman, Ld. counsel for the
convict.

ORDER ON SENTENCE

1. Arguments heard on sentence.
2. It is submitted by counsel for convict Saleem that he is not involved in any other offence. Further, he has already spent approximately 3 years and 4 months in custody. It is further submitted that he was never released on interim bail even. During trial, his mother also expired. He is 29 years of age at present and is a first time offender.
3. Per contra, Ld. Addl. PP opposes the probation application whereby submitting that section 397 IPC prescribes a minimum punishment of 7 years.
4. I have heard both the sides and gone through the record.
5. While awarding sentence, several important factors are to be considered to ensure that the sentence is fair and appropriate. The seriousness and nature of crime play a major role in awarding sentence as more severe crimes usually attract harsh punishment. Equally important is the intent of offender, if the offence was committed accidentally or deliberately. Also, the circumstances of the case are also to be looked into. The

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offenders past criminal records is also to be taken into consideration to assess if he is a repeat offender. Also, the impact of crime on victim is to be looked into. The age, background and personal circumstances of the offender also may influence sentence and have to be considered. In this backdrop, the facts of this case are analyzed.

6. As per record, convict is first time offender. Further, as per report from Jail Superintendent, he has already spent 3 years, 2 months and 25 days in custody as on 05.01.2026.

7. As per report of Probation Officer, convict's family comprises of his sister and two brothers. He has not attended any school. Before going to jail, he was working as a tailor whereby earning Rs. 15,000/- per month. Further, the economic condition of his family is not good and they are facing difficulty in daily life. Poverty and unsettled life alongwith peer influence might have caused the changes in his behaviour. Further, he is only 29 years of age at present.

8. Convict is a first time offender. He belongs to economic weaker strata of society. Before this offence, he was living a stable life with his family. In this backdrop, there appears to be possibility of his reformation.

9. As far as the contention that section 397 IPC prescribes a minimum punishment of 7 years and that benefit of probation cannot be granted to convict is concerned, this issue has already been addressed by Hon'ble Apex Court in the

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judgment of *Lakhvir Singh Etc. Vs. State of Punjab and Anr in Criminal Appeal No. 47-48 of 2021 (AIR 2021 SC 555, AIR ONLINE 2021 SC 15)* wherein it is observed that :-

“10. We may notice that since we are concerned with the appellants who were under 21 years of age on the date of the offence and not on the date of conviction, *Section 6* would not come to their aid. In a subsequent judgment of this Court, it was noted that in *Masarullah (supra)*, this Court had calculated the age of the convict as on the date of commission of the offence incorrectly and there has been no discussion of the potential tension *Masarullah vs. State of Tamil Nadu, 1982 3 SCC 458, pr.6. Sudesh Kumar vs. State of Uttarakhand, (2008) 3 SCC 111.* between grant of probation under the Act and the mandatory minimum sentence of 7 years under *Section 397* of the IPC.

11. The legal position insofar as invocation of *Section 4* is concerned has been analysed in *Ishar Das vs. State of Punjab*¹⁰ elucidating that non- obstante 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.

12. The aforesaid aspect is confirmed by the wording of the said Act which reads as under:

“18. Saving of operation of certain enactments. — Nothing in this Act shall affect the provisions of *section 31* of the Reformatory Schools Act, 1897 (8 of 1897), or sub-section (2) of *section 5* of the Prevention of Corruption Act, 1947 (2 of 1947), or of any law in force in any State relating to juvenile offenders or Borstal Schools.” (1973) 2 SCC 65.

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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. Bahubali¹¹. 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.¹² 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.

10. A bare perusal of the above excerpt would show that in a case punishable under Section 397 IPC, the benefit of probation was not declined to the accused only because minimum

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punishment was prescribed. It was opined that Probation of Offenders Act itself provides the Acts wherein its beneficiary provisions are not applicable and IPC is not one of them, hence, benefit of probation can be extended to accused if made out on merits of the case.

11. In the circumstances and in view of above discussion, the application filed by convict for releasing under Probation of Offenders Act is allowed. Convict is directed to be released on furnishing probation bond for a period of 3 months. He is directed to be released from custody forthwith.

12. Put up for furnishing of bonds on **16.02.2026**.

13. **Copy of this order be sent to concerned Jail Superintendent.**

(Twinkle Wadhwa)
ASJ-02(NE)/ KKD/Delhi
10.02.2026/nk