

23.01.2021

At 11.00 am

Proceedings taken up physically as well as through Virtual Mode.

Present:- Ld APP for the State.

Convict Som Nath Bharti present in person on bail.

Mr. Hari Haran, Ld Senior counsel alongwith Ld counsel Sh Mohd Irshad (physically present) are also present for convict Som Nath Bharti through Webex in terms of the request of the convict regarding his application for hearing through physical mode as well as by virtual mode which is moved today physically.

Accused Sandeep @ Sonu is present in person with surety and he filed bail bond/surety bond in terms of Section 437-A Cr.PC for sum of Rs. 10,000/- each, same is perused and accepted.

An application on behalf of the convict Som Nath Bharti is moved for taking relevant information on record and to consider the same while passing order on sentence and if required, necessary enquiry be directed by this Court.

Heard the submission on behalf of the State and on behalf of the convict Som Nath Bharti regarding application of the convict Som Nath Bharti with prayer of releasing him on Probation and for granting him the benefit of The Probation of Offender Act, 1958 and in alternate considering the factor relating to the background of the convict to be considered while passing the order on sentence.

It is submitted on behalf of the State that maximum sentence as per law may be awarded to the Convict Som Nath Bharti.

It is submitted on behalf of the convict by Ld Senior Counsel that vide order dated 22.01.2021, convict was held guilty for offences punishable U/s 323/353 IPC read with Section 149 IPC and offence punishable U/s 3 of The Prevention of Damage to the Public Property Act, 1984 and offence punishable U/s 147 IPC read with Section 149 IPC. It is further submitted that the case of the convict is covered U/s 3 (1) of The Prevention of Damage to the Public Property Act, 1984 which is punishable with imprisonment for a term which may extend to 5 years and with fine. It is further submitted that offence punishable U/s 323 IPC is punishable with imprisonment which may extend to one year, or with fine which may extend to Rs. 1000/-, or with both. It is further submitted that offence punishable U/s 353 IPC is punishable with imprisonment which may extend to two years,

or with fine, or with both. It is further submitted that offence punishable U/s 147 IPC is punishable with punishment which may extend to two years, or with fine, or with both. It is further submitted that the offences for which convict Som Nath Bharti is held guilty is of not so serious in nature and not within the purview of heinous offences. It is further submitted that convict is a sitting MLA having good reputation in the society and he used to devote his all time to the service of society. It is further submitted that convict is having responsibility of two minor children, wife and old age mother. It is further submitted that convict is patient of diabetes and his wife is also patient of diabetes and blood pressure who is under treatment. It is further submitted that convict is sole bread earner of his family and have responsibility to look after his family. It is further submitted that it is the first conviction of the convict in any matter by any Court. It is further submitted that convict faced the long agony of trial and investigation from 09.09.2016 till date. It is further submitted that convict is resident of Delhi. It is further submitted that benefit of Section 4 of The Probation of Offender Act read with Section 360 Cr.PC may be given to the convict Som Nath Bharti. Ld Senior Counsel for convict has relied upon the judgment of Hon'ble Supreme Court of India titled as "***Sushil Kumar Singhal Vs. Regional Manager, Punjab National Bank***" (2010) 8 Supreme Court Cases 573, "***Mohd Muneer Alam Vs. State of Bihar***"(2010) 12 Supreme Court Cases 26, "***Halappa & Ors. Vs. State of Karnataka***"(2009) 9 Supreme Court Cases, 336, "***Nirmal Lal Gupta Vs. State of Orissa***" (1995) SUPP (2) Supreme Court Cases 713 and judgment of Hon'ble Supreme Court of India titled as "***Lakhbir Singh Etc Vs. State of Punjab & Anr***", in ***Criminal Appeal No. 47-48 of 2021 dated 19.01.2021***. It is further submitted that case of the convict came within the purview of Section 4 of The Probation of Offender Act and benefit of the same may be given to the convict.

It is further submitted on behalf of the convict that lenient view may be taken against the convict if the convict be sentenced for imprisonment or fine considering the background of the convict and background of the case. It is further submitted that agitation was raised due to the public demand being the MLA of the area. It is further submitted that convict moved to the place of incident on the basis of public perception and on the demand of public regarding the genuine concern of the public at large of his Constituency. It is further submitted that convict is a long time practicing lawyer and a member of Bar Association of Supreme Court of India, Delhi High Court and District Court and he is a voice of the depressed class of the society and a Speaker on Constitutional matters and politico legal concern. It is further submitted that convict is a sitting MLA and third time

MLA from Malviya Nagar Assembly Constituency. It is further submitted that convict is a former Law Minister of Govt of Delhi and is a President of IIT Delhi Alumni Association and Senator with IIT, Delhi Senate. It is further submitted that convict helped innumerable poor persons and marginalized section of society to get justice pro bono. It is further submitted that convict has already been acquitted/discharged in three cases bearing FIR No. 1266/14, FIR No. 519/16, FIR No. 185/17. It is further submitted that lenient view may be taken against the convict considering his good background in social service and the background of the case. Ld Senior Counsel for convict has relied upon the judgment of Hon'ble Supreme Court of India titled as “ **Ved Parkash Vs. State of Haryana**” (1981) 1 SCC 447, the judgment of Hon'ble High Court of Delhi titled as “ **Slok Kumar & Ors. Vs. State**” (2009) 1 JCC 27, the judgment of Hon'ble Supreme Court of India titled as “**Dilbagh Singh Vs. State of Punjab**” (1979) (2) SCC 103, “**State Vs. Kaptan Singh**”, (2008) (1) JCC 397 of the Hon'ble High Court of Delhi.

I have considered the submission made on behalf of the convict Som Nath Bharti regarding his prayer for granting him benefit of The Probation of Offender Act, 1958. The convict Som Nath Bharti is a well educated person having qualification of M.Sc.(IIT Delhi) and he is also Law Graduate and he is also Member of Legislative Assembly. He was well aware about the consequences of committing the offence and he actively participated in the commission of offence in order to damage the Public Property belonging to the AIIMS, New Delhi. Hence, Court is not inclined to grant him the benefit of The Probation of Offender Act, 1958. Accordingly, the prayer of the convict Som Nath Bharti qua granting the benefit of The Probation of Offender Act, 1958 is disposed off.

ORDER ON SENTENCE

AT 12.30 PM

I have considered the submission made on behalf of the State and submission made on behalf of the Convict Som Nath Bharti through Ld Senior Counsel. I have also perused the judgments as relied upon by the convict in support of his arguments.

Hon'ble Supreme Court of India in case titled as “ ***In Re: Destruction of Public & Private Property.... Vs. State of Andhra Pradesh & Ors.***” Dated 16.04.2009, while considering the tendency of destruction of public property and private property during public agitation on the pretext of exercising democratic right of agitation set up two Committees for changes in the law headed by Retired Hon'ble Mr. Justice K.P Thomas and Hon'ble Mr. Justice F.S Nariman (the then Ld Senior Advocate). Both the Committees

recommended the changes in law and it was suggested that prosecution should be required to prove that the public property has been damaged in direct action called by an organization and that the accused also participated in such direct action. It was further recommended that law must be amended to give the power to the Court to draw a presumption that accused is guilty of destroying public property and it would be then open to the accused to rebut such presumption and burden of proof is required to be reversed as applicable in sexual offence cases. The Committee further recommended that rioters should be made strictly liable and compensation must be collected qua the damage done.

The Court is of the view that the mind set to cause damage to the public property and infrastructure is the attack on the common man. The infrastructure and public property of the country are not of any leader, party or government but these are national assets. The infrastructure are build up with the contribution of every poor, every tax payer, middle class and every section of society. While exercising the democratic rights, people must not forget about national duty to preserve the national assets and resources meant for each and every citizen. Considering the above discussion, ***the convict Som Nath Bharti S/o Late Sh Sita Ram Bharti is sentenced for simple imprisonment for 15 days alongwith fine of Rs. 500/- for offence punishable U/s 323 IPC read with Section 149 IPC. Convict is further sentenced for simple imprisonment for a period of 6 months for offence punishable U/s 353 IPC read with Section 149 IPC alongwith fine of Rs. 500/-. Convict is further sentenced for simple imprisonment for a period of one year for offence punishable U/s 147 IPC read with Section 149 IPC alongwith fine of Rs. 1000/-. Convict is further sentenced for simple imprisonment for a period of two years for offence punishable U/s 3 (1) of The Prevention to Damage of Public Property Act, 1984 alongwith fine of Rs. 1,00,000/-. All the sentences shall run concurrently and in case fine amount is not paid by convict, the convict shall further under go Simple Imprisonment for a period of one month. In case fine be deposited by the convict, out of the fine amount, sum of Rs. 75,000/- be paid to the AIIMS, New Delhi as a compensation and Rs. 25,000/- be deposited with the State.*** Copy of the judgment, copy of order on sentence, copy of charge, copy of charge sheet, copy of evidence, copy of statement of accused recorded U/s 313 Cr.PC be given free of cost to the convict. **Fine not paid.**

File be consigned to Record Room.

(Ravindra Kumar Pandey)
ACMM-01/RADC/New Delhi
23.01.2021

**CNR No. DLCT12-000039-2019
Criminal Case No. 09/19
FIR No. 659/16
PS : Hauz Khas
State Vs. Somnath Bharti & Ors.**

At this stage, an application U/s 389 (3) Cr.PC is moved by convict Som Nath Bharti for suspension of sentence till the filing of appeal. The same is heard. Convict was on bail during the entire trial. Considering the same, convict is admitted on bail on furnishing of bail bond/surety bond for sum of Rs. 20,000/- each. Bail Bond & Surety bond furnished & accepted. File be consigned to Record Room.

**(Ravindra Kumar Pandey)
ACMM-01/RADC/New Delhi
23.01.2021**