Rajasthan High Court
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HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

S.B. Criminal Appeal (Sb) No. 1466/2026
CNR: RJHC010845972026 | URN: CRLAS / 3414U / 2026

Sanjay Alias Sethi S/o Mohanlal, Aged About 18 Years, Resident Of Ward No. 18, Rawatsar, Police Station Rawatsar, District Hanumangarh, Rajasthan. (Presently Lodged In Central Jail Sriganganagar)

----Appellant

Versus

State Of Rajasthan, Through Pp

----Respondent

For Appellant(s)	:	Ms. Daya Gulsar
For Respondent(s)	:	Mr. Ramesh Devasi, DyGA

HON'BLE MR. JUSTICE FARJAND ALI

Judgment

28/09/2026

1. This instant criminal appeal has been preferred by the appellant-Sanjay @ Sethi against the judgment dated 02.05.2026 passed by the learned Additional Sessions Judge, Rawatsar, District Hanumangarh in Sessions Case No.39/2023 (57/2019), whereby the appellant, along with other co-accused, was held guilty for the offences punishable under Sections 148, 452, 341, 323/149, 325/149 and 427 IPC. However, taking into consideration the facts and circumstances of the case, the learned trial Court extended to the accused the benefit of Section 4 of the Probation of Offenders Act, 1958 (for short, 'the Act') and directed their release on probation of good conduct upon furnishing the requisite bond and surety. While extending the benefit of

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probation, the learned trial Court also passed an order under Section 5 of the Act directing the appellant to deposit a sum of Rs.10,000/- towards the costs of the proceedings. The appellant could not deposit the aforesaid amount.

2. Subsequently, on 29.06.2026, the learned trial Court, taking note of the non-payment of the aforesaid amount, treated the same as non-compliance with the conditions imposed while granting probation, terminated the benefit of probation and proceeded to impose substantive sentences upon the appellant for the offences for which he had originally been convicted. Consequently, the appellant came to be taken into custody and has remained incarcerated thereafter.

3. Learned counsel appearing for the appellant, who has been provided through the Rajasthan High Court Legal Services Committee, submits that the appellant is not in a position to arrange the amount of Rs.10,000/- on account of his extremely poor financial condition. It is submitted that the appellant is not pressing the challenge to the conviction in the present appeal and is primarily concerned with the consequence that, merely on account of his inability to deposit the aforesaid amount, the benefit of probation, which had consciously been extended to him by the learned trial Court, has resulted in his incarceration. It is submitted that the appellant has already remained in custody for more than three months.

4. Learned Public Prosecutor has opposed the appeal.

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5. Heard learned counsel for the parties and perused the material available on record.

6. So far as the conviction of the appellant is concerned, learned counsel for the appellant has not seriously assailed the same. Even otherwise, upon an independent examination of the record, this Court does not find any such perversity, illegality or infirmity in the finding of guilt recorded by the learned trial Court which may warrant interference with the conviction. The conviction of the appellant for the offences under Sections 148, 452, 341, 323/149, 325/149 and 427 IPC, therefore, does not call for interference.

7. The question which arises for consideration in the present appeal, therefore, is not so much with regard to the legality of the conviction, which has not been seriously assailed before this Court, but with regard to the consequence which has followed from the appellant's failure to deposit the amount directed under Section 5 of the Act. The precise question is whether, after the learned trial Court had, upon consideration of the age, antecedents and other circumstances of the appellant, consciously found him deserving of the benefit of probation and had refrained from imposing substantive imprisonment, his inability to arrange the amount of Rs.10,000/- on account of his financial condition could, by itself, furnish a just basis for withdrawing the benefit of probation and committing him to prison.

8. The scheme of the Act assumes significance in this regard. Section 4 empowers the Court, having regard to the

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circumstances of the case, including the nature of the offence and the character of the offender, to release an offender on probation of good conduct instead of sentencing him at once to any punishment. Section 5, on the other hand, permits the Court, if it thinks fit, to make a further order directing the released offender to pay compensation for the loss or injury caused by the offence or such costs of the proceedings as the Court considers reasonable. Thus, the direction contemplated under Section 5 is a discretionary order accompanying the release of an offender on probation. Sub-section (2) of Section 5 provides for recovery of the amount so ordered as a fine in accordance with law.

9. The statutory scheme further makes a distinction between the conditions governing the release of an offender on probation and the monetary direction contemplated under Section 5. Section 9 specifically deals with failure to observe the conditions of the bond entered into under Section 4 and prescribes the consequences which may follow upon such failure. Significantly, Section 5 itself does not provide that failure to pay the amount ordered towards compensation or costs shall, as a consequence, result in a sentence of imprisonment. The statutory consequence expressly provided in Section 5(2) is recovery of the amount as a fine.

10. In the present case, the learned trial Court, after recording the conviction, consciously exercised the jurisdiction available under Section 4 of the Act and chose not to subject the appellant to substantive imprisonment. Having regard to the age,

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antecedents and other circumstances of the accused, the learned trial Court specifically recorded that extending the benefit of the provisions of the Probation of Offenders Act was justified. The appellant was, thus, extended the benefit of a reformative measure in lieu of incarceration. The subsequent order dated 29.06.2026, however, resulted in a complete reversal of that position. The appellant was taken into custody and has thereafter remained incarcerated, essentially on account of his failure to arrange the amount of Rs.10,000/- directed under Section 5.

11. In these circumstances, a distinction has to be drawn between deliberate violation of the conditions of probation and inability to comply with a monetary direction. A person who wilfully violates the conditions of probation may face the consequences contemplated under Section 9 of the Act. However, inability to pay an amount, by itself, cannot be treated as deliberate violation of the conditions of probation unless there is material to show that the failure was wilful.

12. The learned trial Court had already considered the appellant suitable for the benefit of probation and, instead of imposing substantive imprisonment, released him on probation of good conduct. The present case, therefore, is not about relieving the appellant from the consequences of his conviction. The question is whether the benefit of probation, once granted on such consideration, can be withdrawn merely because the appellant was unable to arrange the amount directed under Section 5 of the Act.

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Such a consequence would make the benefit of probation dependent upon the financial capacity of the offender.

13. In the present case, there is no material to show that the appellant deliberately failed to comply with the monetary direction or that he otherwise violated the conditions of probation. His inability to arrange the amount of Rs.10,000/- has resulted in his incarceration. In these circumstances, the mere failure to pay the amount towards prosecution expenses cannot, in the opinion of this Court, be treated as sufficient ground for withdrawing the benefit of probation already granted to him.

14. The operative part of the judgment dated 02.05.2026 makes the nature of the monetary direction clear. The learned trial Court directed each of the five convicted accused to deposit Rs.10,000/- under Section 5 of the Act, making an aggregate amount of Rs.50,000/-. Out of the said amount, Rs.30,000/- was specifically directed to be paid as compensation to the wife of injured Subhash and Rs.10,000/- to injured Malkit, while the remaining amount was directed to remain towards prosecution expenses. Thus, the order itself makes a distinction between the amount intended as compensation to the victims and the amount towards prosecution expenses.

15. The distinction assumes significance in the facts of the present case. The compensation component of the order, namely Rs.30,000/- directed to the wife of injured Subhash and Rs.10,000/- directed to injured Malkit, does not stand affected by dispensing with the appellant's payment of the remaining

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Rs.10,000/- towards prosecution expenses. The latter amount constitutes only the balance amount contemplated by the operative direction under Section 5. Consequently, the question before this Court is not one of depriving the injured persons or their dependant of the compensation directed in their favour, but whether the appellant, who has already been found fit for probation, should be deprived of his liberty solely because he has been unable to arrange the remaining amount towards prosecution expenses.

16. There is yet another aspect which cannot be lost sight of. The appellant is in custody pursuant to the subsequent order dated 29.06.2026. He is represented through legal aid. There is no material before this Court to suggest that, during the period for which the benefit of probation was available to him, he had misused the liberty granted to him, violated the obligation to maintain peace and good behaviour, repeated the offence, or otherwise committed any substantive breach of the conditions upon which he was released on probation. The consequence of incarceration has thus followed from a monetary default and not from any subsequent misconduct or misuse of the liberty granted by the Court.

17. In the circumstances of the present case, mere inability to pay the remaining amount towards prosecution expenses cannot be treated as a sufficient reason to take away the liberty which the learned trial Court had consciously chosen to grant by extending the benefit of probation. The appellant has not been shown to

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have misused that liberty or violated the conditions of his release. If financial inability alone were to result in incarceration, the benefit of probation would, in practical terms, depend upon the offender's capacity to pay rather than upon his suitability for reform.

18. The Court is conscious that the monetary direction under Section 5 forms part of the order passed while extending the benefit of probation. Nevertheless, the provision itself confers a discretion upon the Court, and the consequence of non-payment cannot be examined in isolation from the nature and purpose of the amount directed to be deposited. Here, the amount earmarked for compensation to the victims is distinct from the remaining amount towards prosecution expenses, and the appellant's financial incapacity to deposit the latter has resulted in the much more serious consequence of his incarceration. In the peculiar facts of the present case, such consequence cannot be permitted to operate so as to defeat the reformative benefit which the learned trial Court had consciously granted.

19. In view of the foregoing discussion, this Court is of the considered opinion that the appellant's financial incapacity to deposit the remaining amount of Rs.10,000/- towards prosecution expenses ought not to result in withdrawal of the benefit of probation already granted to him. The said monetary direction, insofar as it operates against the appellant, is accordingly liable to be dispensed with. Consequently, the order dated 29.06.2026, insofar as it withdraws the benefit of probation and imposes

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substantive sentences upon the appellant on account of the said non-payment, cannot be sustained.

20. Consequently, while this Court finds no reason to interfere with the finding of conviction recorded by the learned trial Court, however, the order dated 29.06.2026, insofar as it withdraws the benefit of probation granted to the appellant and consequently subjects him to substantive imprisonment, is set aside.

21. Accordingly, the instant criminal appeal is partly allowed in the following terms:

(i) The conviction of the appellant-Sanjay @ Sethi for the offences under Sections 148, 452, 341, 323/149, 325/149 and 427 IPC, as recorded by the learned Additional Sessions Judge, Rawatsar, District Hanumangarh vide judgment dated 02.05.2026, is affirmed.

(ii) The benefit of release on probation of good conduct granted to the appellant under Section 4 of the Probation of Offenders Act, 1958 vide judgment dated 02.05.2026 is restored.

(iii) The direction under Section 5 of the Probation of Offenders Act, 1958, insofar as it requires the appellant to deposit the remaining amount of Rs.10,000/- towards prosecution expenses, is hereby dispensed with.

(iv) The order dated 29.06.2026, insofar as it terminates the benefit of probation granted to the appellant and imposes substantive sentences of imprisonment upon him, is set aside.

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(v) The sentences and fines imposed upon the appellant pursuant to the order dated 29.06.2026, being consequential to withdrawal of the benefit of probation, shall also stand set aside.

22. The appellant-Sanjay @ Sethi shall be released forthwith, if not required in any other case, subject to furnishing the bond and surety in terms of the order dated 02.05.2026, as modified by this judgment.

23. The record of the learned trial Court be returned forthwith.

24. A copy of this judgment be sent to the learned trial Court for compliance.

(FARJAND ALI),J

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