

**IN THE COURT OF VAIBHAV MEHTA,
ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE-03, ROUSE AVENUE DISTRICT
COURTS, NEW DELHI**

CR NO. 33/2019

FIR No. 236/2015

State vs Gora Chand Dass & Ors.

PS: Burari

05.01.2023

ORDER ON QUANTUM OF SENTENCE

Present: Sh. Lalit Pingolia, Ld. APP for State.
Convicts Sanjeev Jha, Shyam Gopal
Gupta, Akhilesh Pati Tripathi, Balram Jha,
Kishore Kumar, Lalit Mishra, Neeraj
Pathak, Raju Malik, Ashok Kumar, Ravi
Prakash Jha, Manoj Kumar, Vijay
Pratap Singh, Ismail Islam and Yashwant
are present.
Convict namely Jagdish Chander
Joshi Heera Devi and Narender Rawat are
absent.
Sh. Mukesh Kalia, Ld. counsel for the
convict Akhilesh Pati Tripathi.
Sh. Shivanand Mishra, Ld. counsel for the
convict Ravi Prakash Jha.
Sh. Murari Kumar, Sh. Gaurav sharma and

Sh. Rahul Ranjan, Ld. counsels for the remaining convicts.

An application for seeking exemption application of personal appearance of the convicts namely Jagdish Chander Joshi, Heera Devi and Narender Rawat has been filed. Heard. Record perused. Therefore, the exemption application is allowed and they are exempted for today only.

Probation report has already been filed and report of DLSA already received.

Arguments on sentence already heard and matter was fixed for orders on sentence.

Ld. APP for State has argued that convicts namely Sanjeev Jha, Shyam Gopal Gupta, Akhilesh Pati Tripathi, Balram Jha, Kishore Kumar, Lalit Mishra, Jagdish Chander Joshi, Neeraj Pathak, Raju Malik, Ashok Kumar, Ravi Prakash Jha, Manoj Kumar, Vijay Pratap Singh, Heera Devi, Narender Rawat, Ismail and Yashwant have been found guilty of committing offences u/s 147/186/332/149 IPC. The convicts may be punished with maximum imprisonment. It is further submitted by Ld. APP that during trial, total expenses of Rs.9,108/- was incurred by the prosecution.

On the other hand, Ld. Defence Counsel has argued that convict persons have a family to support and have been facing trial since 2015 and so they may be given a chance to reform themselves as most of them are first time offenders and belong to decent families and so the Ld.

defence counsels have further submitted that the convicts be released on probation of good conduct & behaviour.

Ld. defence counsel for accused Akhileshpati Tripathi has argued that he has a family to support including wife and two minor children and he also has been facing trial since 2015. It is further submitted by the Ld. defence counsel of Akhileshpati Tripathi that he was involved in another case and was released on probation in that case i.e. FIR No. 260/13 of PS Model Town and he submits that he may be given a 2nd chance to reform himself. The convict Akhileshpati Tripathi has relied upon judgment i.e. **Lakha Ram vs State of Rajasthan & Anr Civil Writ Petition No. 9352 of 2008** to support his submissions.

The remaining convicts have also relied upon other judgments that is: **Mohd Hashim vs State of Uttar Pradesh & Ors** 2017 2SCC and **Lakhvir Singh & Ors vs State of Punjab & Anr** 2021 SCC 763.

Ld. defence counsels have further submitted that in case, the convicts are not released on probation, then they may be admonished. It is further submitted by Ld. defence counsels that the convicts are ready to pay fine or pay compensation to the victims as per law.

Furthermore, as per probation report filed probation officer, it is mentioned as under:

1. Convict Jagdish Joshi:- He is married man and sole bread earner of his family and has a family to support including old aged mother, wife, 1 son and 1

daughter. His financial condition is good as his income is Rs.55,816/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

2. Convict Ismile Islam: He is married man and sole bread earner of his family and has a family to support including old aged mother and wife. His income is Rs.15,000/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

3. Convict Heera Devi : She is married women and she is housewife and has a family to support including old aged father, husband, 1 son and 1 daughter. As per probation officer's report, she may be considered for the benefit of probation as she is first time offender.

4. Convict Narender Singh Rawat: He is married man and sole bread earner of his family and has a family to support including old aged father, wife and daughter. His income is Rs.23,937/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

5. Convict Manoj: He is married man and sole bread earner of his family and has a family to support including old aged parents, wife, son and daughter. His income is Rs.17,500/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

6. Convict Lalit Mishra: He is married man and sole bread earner of his family and has a family to support including old aged mother, wife, son and daughter. His income is Rs.15,000/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

7. Convict Kishore Kumar: He is married man and sole bread earner of his family and has a family to support including old aged father, wife and daughter. His income is Rs.21,500/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

8. Convict Ravi Prakash Jha: He is married man and sole bread earner of his family and has a family to support including old aged parents, wife, son and daughter. His income is Rs.1,81,000/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

9. Convict Balram Jha: He is married man and sole bread earner of his family and has a family to support including wife, son and daughter. His income is Rs.15,000/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

10. Convict Ashok Kumar: He is married man and sole bread earner of his family and has a family to support including old aged parents, wife, son and daughter.

His income is Rs.15,000/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

11. Convict Neeraj Pathak: He is unmarried and is the sole bread earner of his family and has old aged parents. His income is Rs.40,000/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

12. Convict Raju Malik: He is married man and sole bread earner of his family and has a family to support including old aged parents, wife, son and 2 daughters. His income is Rs.35,925/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

13. Convict Shyma Gopal Gupta: He is married man and sole bread earner of his family and has a family to support wife, son and daughter. His income is Rs.5,000/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

14. Convict Yashwant: She is widow woman and sole bread earner of her family and has a family to support including father-in-law and 3 sons. As per probation officer's report, she may be considered for the benefit of probation as she is first time offender.

15. Convict Vijay Pratap Singh: He is married man and sole bread earner of his family and has a family to

support including old aged mother, wife, son and daughter. His income is Rs.15,000/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

16. Convict Sanjeev Jha: He is married man and sole bread earner of his family and has a family to support wife, son and daughter. He is presently serving as an MLA. His income is Rs.53,000/- per month. As per probation officer's report, he may be considered for the benefit of probation as he is first time offender.

17. Convict Akhileshpati Tripathi: He is married man and sole bread earner of his family and has a family to support wife and two minor children. As per the report, he was MLA of PS Model Town and also faced another case i.e. FIR No. 260/13 of PS Model Town and also spent 13 days in JC in that case. His income is Rs.53,000/- per month. As per probation officer's report, he may be considered for the benefit of probation.

Ld. defence counsels further argued on the point of probation as under:

(a) For awarding a just sentence, the Trial Judge must consider the provisions of the Probation of Offenders Act and the provisions on probation in the Code of Criminal Procedure;

(b) When it is not possible to release a convict on probation, the Trial Judge must record his or her reasons;

(c) The grant of compensation to the victim of a

crime is equally a part of just sentencing;

(d) When it is not possible to grant compensation to the victim of a crime, the Trial Judge must record his or her reasons; and

(e) The Trial Judge must always be alive to alternative methods of a mutually satisfactory disposition of a case.

I have considered the submissions of Ld. APP for State and Ld. defence counsels. I have also gone through the probation report, DLSA report, judgments filed by parties and other material on record.

The law with respect to awarding sentence has been crystallized very clearly. In **“B. G. Goswami Vs. Delhi Administration”** 1974 3 SCC 85, the **Hon'ble Supreme Court of India** has held : -

“.....The main purpose of the sentence broadly stated is that the accused must realize that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given

somewhat greater importance. Too lenient as well as too harsh sentence both lose their efficaciousness. One does not deter and the other may frustrate, thereby making the offender a hardened criminal.....”.

The **Law Commission of India** (in its 47th report)

has summed up the components of a proper sentence : -

“A proper sentence is a composite of many factors, including the nature of the offence, the circumstances --- extenuating or aggravating --- of the offence, the prior criminal record, if any, of the offender, the age of the offender, the professional and social record of the offender, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospect for the rehabilitation of the offender, the possibility of a return of the offender to normal life in the community, the possibility of treatment or of training of the offender, the possibility that the sentence may serve as a deterrent to crime by this offender, or by others, and the present community need, if any, for such a deterrent in respect to the particular type of offence involved.”

In matter of **“Shailesh Jasvantbhai and Another Vs. State of Gujarat and Others”** (2006) 2 SCC 359, the **Hon'ble Supreme Court of India** has observed that :-

“7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. it could be achieved

through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law, which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of “order” should meet the challenges confronting the society. Friedman in his law in Changing Society stated that : “State of criminal law continues to be – as it should be – a decisive reflection of social consciousness of society.” Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

Section 3 in The Probation of Offenders Act, 1958 reads as under:

3. Power of court to release certain offenders after admonition.—*When any person is found guilty of having*

committed an offence punishable under section 379 or section 380 or section 381 or section 404 or section 420 of the Indian Penal Code, (45 of 1860) or any offence punishable with imprisonment for not more than two years, or with fine, or with both, under the Indian Penal Code, or any other law, and no previous conviction is proved against him 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 so to do, then, notwithstanding anything contained in any other law for the time being in force, the court may, instead of sentencing him to any punishment or releasing him on probation of good conduct under section 4 release him after due admonition. Explanation.—For the purposes of this section, previous conviction against a person shall include any previous order made against him under this section or section 4.

Section 4 of the Probation of Offenders Act, 1958 reads as under:

“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.”

Further Section 5 of the Probation of Offenders Act, 1958 provides as under:

“5. Power of court to require released offenders to pay compensation and costs.-

(1) The court directing the release of an offender under section 3 or section 4, may, if it thinks fit, make at the same time a further order directing him to pay-

(a) such compensation as the court thinks reasonable for loss or injury caused to any person by the commission of the offence; and

(b) such costs of the proceedings as the court thinks reasonable.

(2) The amount ordered to be paid under sub-section (1) may be recovered as a fine in accordance with the provisions of sections 386

and 387 of the Code.

(3) A civil court trying any suit, arising out of the same matter for which the offender is prosecuted, shall take into account any amount paid or recovered as compensation under sub-section (1) in awarding damages.”

Thus, under Section 5 of the Probation of Offenders Act, the court can direct payment of costs of the proceedings as well as compensation.

In the present case, the convicts have been found guilty of committing offences u/s 147/186/332/149 IPC. The offence u/s 147 IPC invites maximum imprisonment upto two years or with fine or both. Offence u/s 186 IPC invites maximum imprisonment upto three months or with fine of Rs.500/- or both. The offence u/s 332 IPC invites maximum imprisonment upto three years or with fine or both. The convicts were the members of an unlawful assembly and some members of this assembly voluntarily caused hurt to the public servant Ct. Babu Lal to deter him from his duty and also stopped Ct. Vikas, SI Ajay Kumar and other police staff members from doing their duties and also committed the offence of rioting.

As per the victim impact report, Ct. Babu Lal was the injured in the incident pursuant to the present FIR and he sustained injuries on his right shoulder for which his surgery is still pending which is estimated to cost about

Rs.50,000/- to Rs.60,000/-. Other injured police officials namely Ct. Harphool Singh and HC Bharat Rattan sustained minor injuries and received first aid treatment and were advised bed rest and no other medical care was needed in their case.

Thus, considering the totality of facts and circumstances, I am of the following opinion:-

(i) With respect to convicts namely **(1) Ashok Kumar, (2) Ravi Prakash Jha, (3) Ismail Islam, (4) Manoj Kumar and (5) Vijay Pratap Singh**, this court has observed that the abovesaid five convicts were arrested at the spot and were found to be involved in stone pelting and raising slogans against police officials and were also involved in injuring police officials and they were part of the unlawful assembly with the common object of the assembly being to teach the police a lesson by show of criminal force and so considering the totality of facts and circumstances, I am of the considered opinion that the convicts are not entitled to benefit of Probation of Offenders Act.

Considering the factual and legal position the court finds it reasonable in order to meet the ends of justice in the present case to sentence the convicts to undergo **simple imprisonment for a period of 03 months** for offence u/s 332 IPC r/w 149 IPC. The convicts are further sentenced to pay fine of **Rs.10,000/- each** to be deposited in the court for the abovesaid offence. The convicts are admonished for the remaining offence u/s 147/186 IPC r/w

149 IPC. In default of deposition of fine, convicts shall undergo further simple imprisonment for a period of 01 months. The benefit of section 428 Cr.PC be accorded to the convicts.

Fine not paid today.

At this stage, convicts have moved an application u/s 389 Cr.PC seeking suspension of sentence till the filing of appeal against the order on sentence. Considering the submissions made in the application, the execution of the sentence is suspended for a period of 30 days from today. The convicts are admitted to bail for a period of 30 days for the purpose of preferring an appeal on furnishing personal bonds in the sum of Rs.10,000/- with a surety of like amount. Personal bail bond furnished by abovesaid convict except convict Ravi Prakash Jha, perused and accepted till 07.01.2023. The convicts except Ravi Prakash Jha are directed to furnish surety bonds on or before 07.01.2023.

At this stage, convict Ravi Prakash Jha has filed an application for restoration of previous surety for the purpose of filing appeal as per section u/s 389 Cr.PC.

Heard.

Previous surety bonds of convict Ravi Prakash Jha is accepted till 04.02.2023.

(ii) With respect to convicts **(6) Narender Singh Rawat and (7) Raju Malik**, this court is of the view that the convicts were found to be raising slogans against the Delhi

police and were provoking and instigating the crowd. This court also noticed that simple injuries were sustained by the above-said convicts due to action of Delhi police while trying to control the unruly mob and so considering the objectives of Probation of Offenders Act, 1958 and considering social background of the convicts, nature of offence, character of convicts and also noticing that the convicts have no criminal antecedents, this court is of the view that this is a case fit for reformation and rehabilitation of the convicts rather than sending them to jail.

It is therefore, ordered in the exercise of powers under Section 4 of Probation of Offenders Act, 1958 that instead of sentencing the convicts, they shall be released on probation of good conduct for a period of one year on furnishing a bond of good conduct on the following conditions:

i) They shall not involve themselves in any offence and registration of any further case shall make them liable for cancellation of probation.

ii) They shall receive the sentence as may be given by the Court if the benefit of probation is withdrawn.

iii) They shall maintain peace and harmony and refrain from criminal activity.

iv) As per the affidavit filed by the prosecution, the cost of proceedings incurred by the prosecution is Rs.9,108/-. The convicts are directed to deposit Rs5,000/- each as cost of proceedings under Section

5 of the Probation of Offenders Act, 1958.

Cost not paid today.

The above-said order of grant of probation would be subject to the deposition of cost amount by the convicts.

Benefit of Section 12 of The Probation of Offenders Act, 1958 shall be available to the convict for all future purposes, if above-said conditions are fulfilled.

Probation bond not filed today. The counsel for the convicts seek an adjournment for filing the probation bond. The convicts are directed to file the same on or before **07.01.2023**.

(iii) With respect to convicts namely **(8) Kishore Kumar, (9) Lalit Mishra, and (10) Jagdish Chander Joshi**, this court is of the view that the convicts were found to be raising slogans against the Delhi police and were provoking and instigating the crowd. This court also noticed that simple injuries were sustained by the above-said convicts due to action of Delhi police while trying to control the unruly mob and so considering the objectives of Probation of Offenders Act, 1958 and considering social background of the convicts, nature of offence, character of convicts and also noticing that the convicts have no criminal antecedents, this court is of the view that this is a case fit for reformation and rehabilitation of the convicts rather than sending them to jail.

It is therefore, ordered in the exercise of powers

under Section 4 of Probation of Offenders Act, 1958 that instead of sentencing the convicts, they shall be released on probation of good conduct for a period of one year on furnishing a bond of good conduct on the following conditions:

i) They shall not involve themselves in any offence and registration of any further case shall make them liable for cancellation of probation.

ii) They shall receive the sentence as may be given by the Court if the benefit of probation is withdrawn.

iii) They shall maintain peace and harmony and refrain from criminal activity.

iv) As per the affidavit filed by the prosecution, the cost of proceedings incurred by the prosecution is Rs.9,108/-. The convicts are directed to deposit Rs5,000/- each as cost of proceedings under Section 5 of the Probation of Offenders Act, 1958.

Cost not paid today.

The above-said order of grant of probation would be subject to the deposition of cost amount by the convicts.

Benefit of Section 12 of The Probation of Offenders Act, 1958 shall be available to the convict for all future purposes, if above-said conditions are fulfilled.

Probation bond not filed today. The counsel for the convicts seek an adjournment for filing the probation bond. The convicts are directed to file the same on or before

07.01.2023.

(iv) With respect to convicts namely **(11) Balram Jha, and (12) Neeraj Pathak**, this court is of the view that the abovesaid convicts were part of the unlawful assembly and were involved in rioting and obstructed the police officials and caused hurt to them. The abovesaid convicts were found to have assaulted Ct. Babu Lal and were found to have mercilessly beaten Ct. Babu Lal by putting him on the ground and then given him fists and leg blows as a result of which he sustained injuries on his shoulder. As per the victim impact report, the shoulder surgery of Ct. Babu Lal is still pending and would require about Rs.50,000/- in expenses and so, looking at the factum and circumstances and allegations against the convicts, I am of the considered opinion that the convicts are not entitled to benefit of Probation of Offenders Act.

Considering the factual and legal position the court finds it reasonable in order to meet the ends of justice in the present case to sentence the convicts to undergo simple imprisonment for **a period of one year** for offence u/s 332 IPC r/w 149 IPC. **The convicts are further sentenced to pay fine of Rs.20,000/- each** to be deposited in the court for the abovesaid offence. The convicts are admonished for the remaining offences u/s 147/186 IPC r/w 149 IPC. The fine amount will be given as compensation to the injured Ct. Babu Lal. In default of payment of fine, convicts shall undergo further simple imprisonment for a period of 03

months. **Fine not paid today.**

At this stage, convicts have made an application u/s 389 Cr.PC seeking suspension of sentence till the filing of appeal against the order on sentence. Considering the submissions made in the application, the execution of the sentence is suspended for a period of 30 days from today. The convicts are admitted to bail for a period of 30 days for the purpose of preferring an appeal on furnishing personal bonds in the sum of Rs.10,000/- with a surety of like amount. Personal bail bond furnished, perused and accepted till 07.01.2023. The convicts are directed to furnish surety bonds on or before 07.01.2023.

(v) With respect to convict namely **(13) Shyam Gopal Gupta**, this court is of the view that the convict was part of the unlawful assembly with common object of assembly to teach a lesson to the police officials and the above-said convict was also instigating the crowd to carry out stone pelting and was actively involved as a member of the unlawful assembly obstructing the police officials from doing their duties and so, looking at the factum and circumstances and allegations against the convict, I am of the considered opinion that the convict is not entitled to benefit of Probation of Offenders Act.

Considering the factual and legal position the court finds it reasonable in order to meet the ends of justice in the present case to sentence the convict to undergo **simple**

imprisonment for a period of 03 months for offence u/s 332 IPC r/w 149 IPC. The convict is further sentenced to fine of Rs.10,000/- to be given as compensation to the injured Ct. Babu Lal for the abovesaid offence. The convict is admonished for the remaining offences u/s 147/186 IPC r/w 149 IPC. In default of payment of fine, convict shall undergo further simple imprisonment for a period of 01 month.

Fine not paid today.

At this stage, convict has made an application u/s 389 Cr.PC seeking suspension of sentence till the filing of appeal against the order on sentence. Considering the submissions made in the application, the execution of the sentence is suspended for a period of 30 days from today. The convicts are admitted to bail for a period of 30 days for the purpose of preferring an appeal on furnishing personal bonds in the sum of Rs.10,000/- with a surety of like amount. Personal bail bond furnished, perused and accepted 07.01.2023. The convict is directed to furnish surety bonds on or before 07.01.2023

(vi) With respect to convicts namely **(14) Heera Devi aged about 50 years and (15) Yashwant @ Yash Bhatia aged about 55 years**, this court is of the view that the convicts were found to be raising slogans against the Delhi police and were provoking and instigating the crowd. Also convict Heera Devi and convict Yashwant @ Yash Bhatia were alleged to have used force against SI Ajay

Kumar and Ct. Babu Lal. This court noticing that both the abovesaid convicts are ladies approaching the age of senior citizens and considering the objectives of Probation of Offenders Act, 1958 and considering social background of the convicts, nature of offence, character of convicts and also noticing that the convicts have no criminal antecedents, this court is of the view that this is a case fit for reformation and rehabilitation of the convicts rather than sending them to jail.

It is therefore, ordered in the exercise of powers under Section 4 of Probation of Offenders Act, 1958 that instead of sentencing the convicts shall be released on probation of good conduct for a period of one year on furnishing a bond of good conduct on the following conditions:

i) They shall not involve themselves in any offence and registration of any further case shall make them liable for cancellation of probation.

ii) They shall receive the sentence as may be given by the Court if the benefit of probation is withdrawn.

iii) They shall maintain peace and harmony and refrain from criminal activity.

iv) As per the affidavit filed by the prosecution, the cost of proceedings incurred by the prosecution is Rs.9,108/-. The convicts are directed to deposit Rs5,000/- each as cost of proceedings under Section 5 of the Probation of Offenders Act, 1958.

Cost not paid today.

The above-said order of grant of probation would be subject to the deposition of cost amount by the convicts.

Benefit of Section 12 of The Probation of Offenders Act, 1958 shall be available to the convict for all future purposes, if above-said conditions are fulfilled..

Probation bond not filed today. The counsel for the convicts seek an adjournment for filing the probation bond. The convicts are directed to file the same on or before **07.01.2023**.

(vii) With respect to convict namely **(16) Sanjeev Jha**, this court has observed that the abovesaid convict was not only the active participant of the unlawful assembly but was infact leading the mob and instigating and provoking it with the common object of unlawful assembly to teach the police a lesson by show of criminal force. The acts of above-said convict gave the protesters a free hand making them not fearful of the consequences of their actions. Rather than assuaging the feelings of the disgruntled protesters and calming the situation, the action of the abovesaid convict played the role of adding fuel to the fire thereby aggravating the already tense situation as a result of which the crowd got out of control and started pelting stones and caused injuries to police officials. Even though the convict himself did not attack the police officials but his support and provocation emboldened the crowd and gave

them a free hand to do as they please and so considering the totality of facts and circumstances and also considering the weight that the provocative words of the MLA Sanjeev Jha carried, I am of the considered opinion that the convict is not entitled to benefit of Probation of Offenders Act.

Considering the factual and legal position the court finds it reasonable in order to meet the ends of justice in the present case to sentence the convict to undergo **simple imprisonment for a period of 03 months for the offence u/s 332 IPC r/w 149 IPC**. The convict is further sentenced to pay fine of Rs.10,000/- to be deposited in the court for the abovesaid offence. The convict is admonished for the remaining offence u/s 147/186 IPC r/w 149 IPC. In default of deposition of fine, convict shall undergo further simple imprisonment for a period of 01 month.

Fine not paid today.

At this stage, convict has made an application u/s 389 Cr.PC seeking suspension of sentence till the filing of appeal against the order on sentence. Considering the submissions made in the application, the execution of the sentence is suspended for a period of 30 days from today. The convict is admitted to bail for a period of 30 days for the purpose of preferring an appeal on furnishing personal bonds in the sum of Rs.10,000/- with a surety of like amount. Personal bail bond furnished, perused and accepted till 07.01.2023. The convict is directed to furnish surety bonds on or before 07.01.2023.

(viii) With respect to convict namely **(17) Akhileshpati Tripathi**, this court is of the view that his role was similar to the convict Sanjeev Jha and he also was not just part of the unlawful assembly but was infact leading the crowd and was provoking and instigating them and as a result of which the crowd got out of control and started pelting stones on the police officials as a result of which many police officials got injured. If not for the provocative language and support of convict MLA Akhileshpati Tripathi, the crowd would not have had the courage to beat up police officials and so considering the totality of facts and circumstances and also considering the weight that the provocative words carried, I am of the considered opinion that the convict is not entitled to benefit of Probation of Offenders Act. This court has also noticed that convict Akhileshpati Tripathi was convicted in FIR 260/13 of PS Model Town for offence u/s 186 r/w section 149 IPC and so this court is of the view that the convict has in the past also been convicted for obstructing the public servant in discharge of his duties and the convict was given the benefit of probation in the FIR No. 260/13 of PS Model Town.

Considering the factual and legal position the court finds it reasonable in order to meet the ends of justice in the present case to sentence the convict to undergo **simple imprisonment for a period of 06 months for the offence u/s 332 IPC r/w 149 IPC**. The convict is further sentenced

to pay fine of Rs.10,000/- to be deposited in the court for the abovesaid offence. The convict is admonished for the remaining offences u/s 147/186 IPC r/w 149 IPC. In default of deposition of fine, convict shall undergo further simple imprisonment for a period of 01 month.

Fine not paid today.

At this stage, convict has made an application u/s 389 Cr.PC seeking suspension of sentence till the filing of appeal against the order on sentence. Considering the submissions made in the application, the execution of the sentence is suspended for a period of 30 days from today. The convict is admitted to bail for a period of 30 days for the purpose of preferring an appeal on furnishing personal bonds in the sum of Rs.10,000/- with a surety of like amount. Bail bond furnished, perused and accepted. The ahlmad is directed to place the file before this court on **04.02.2023** for necessary direction.

List for furnishing of surety bonds on **07.01.2023** and for further proceedings on **04.02.2023**.

**Announced in the open
Court on 05.01.2023**

**(VAIBHAV MEHTA)
ACMM-03 / RADC
NEW DELHI**