CRR-1704-2025 (O&M)

Harcharan Singh vs. State of Punjab

Present: Mr. Sandeep Singh, Advocate for the petitioner.

Mr. Gurpartap S. Bhullar, AAG Punjab.

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1. The present criminal revision petition has been filed by the petitioner-convict impugning the judgment of conviction and order of sentence dated 13.06.2019 passed by the learned Judicial Magistrate Ist Class, Bathinda (hereinafter referred to as *'the learned JMIC'*) & the judgment dated 27.05.2025 passed by the learned Additional Sessions Judge, Bathinda (hereinafter referred to as *'the learned ASJ'*); whereby, the appeal preferred by the petitioner-convict was dismissed.

2. The brief factual matrix leading to the filing of the instant criminal revision petition and the accompanying miscellaneous application(s) is adumbrated, thus:

(i) The petitioner-convict was arraigned as an accused in FIR No. 25 dated 26.03.2013, registered under Sections 420 and 34 of the IPC, at Police Station Thermal, District Bathinda, Punjab. Upon trial, *the learned JMIC,* vide its judgment dated 13.06.2019, convicted the petitioner-convict for the offence under Section 420 of the IPC and, consequently, vide order of even date, directed the petitioner-convict to undergo Rigorous Imprisonment for 3 years along with a fine of Rs. 1,000/- & in default of payment of fine, to further undergo imprisonment for 15 days.

(ii) Aggrieved against the order of conviction and sentence, the petitioner-convict preferred an appeal before the learned Sessions Court, Bathinda, whereupon, *the learned ASJ,* vide its order dated 27.05.2025, dismissed the appeal preferred by the petitioner-convict and upheld both the

conviction as well as the quantum of sentence, as directed for by *the learned JMIC.* At the time of pronouncement of the order dated 27.05.2025, the petitioner-convict was not present before *the learned ASJ.*

(iii) It is in this factual backdrop that the petitioner-convict has preferred the instant criminal revision petition impugning the order dated 27.05.2025 passed by *the learned ASJ* as also the order dated 13.06.2019 passed by *the learned JMIC*, along with an application for grant of time to surrender and another application for suspension of substantive sentence during the pendency of the instant criminal revision petition.

Rival Submissions

3. Learned counsel for the petitioner-convict has argued that *the learned JMIC* as also *the learned ASJ* have failed to consider the factum of there being no cogent and convincing evidence against the petitioner-convict. It has been further iterated by the learned counsel for the petitioner-convict that the sentence imposed upon the petitioner-convict is unduly harsh. Learned counsel has further submitted that the petitioner-convict could not appear before *the learned ASJ* on account of ill health as he was suffering from heart related issue(s), and that his absence being unintentional may not be considered adversely against the petitioner-convict while considering the miscellaneous applications preferred along with the instant criminal revision petition. On the strength of these submissions, the grant of instant criminal revision petition as also the miscellaneous applications is sought for.

4. *Per contra*, learned State counsel has opposed the revision petition as also the miscellaneous applications filed therein. He has

submitted that there is no ground available with the petitioner-convict to seek indulgence of this Court for setting aside of the concurrent findings of guilt recorded by *the learned JMIC* as also *the learned ASJ*. The learned State counsel has further submitted that the petitioner-convict has scant respect for law and that he, intentionally avoided appearing before *the learned ASJ* to receive the judgment in appeal, and, thereby evading the process of law. The learned State counsel has further submitted that the revision petition, along with the miscellaneous applications, deserves to be dismissed on the ground of maintainability since the petitioner has not surrendered before *the learned ASJ* and is presently not in custody. On the strength of these submissions, learned State counsel has sought for dismissal of the main revision petition as also miscellaneous application(s) filed therein.

5. I have heard the learned counsel for the rival parties and have perused the record.

Prime issue

6. The seminal legal issue that arises for cogitation in the present petition is; the maintainability of a criminal revision petition and application for extension of time to surrender and/ or for suspension of sentence, when such applicant/petitioner has not surrendered and is not in custody.

The analogous issue that arises for consideration is as to whether the instant criminal revision petition, along with the miscellaneous applications filed therein, ought to be granted in the factual *milieu* of the instant case.

7. **Relevant statutory provisions**

I. **The Code of Criminal Procedure, 1973** (hereinafter referred to as 'Cr. P.C.')

"***397. Calling for records to exercise powers of revision.***—*(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his bail or own bond pending the examination of the record.*

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(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

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"***401. High Court's powers of revision.***—*(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.*

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

II. **The Bharatiya Nagarik Suraksha Sanhita, 2023** (hereinafter referred to as 'BNSS')

"***438. Calling for records to exercise powers of revision.***—*(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.*

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this subsection and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

xxx	*xxx*	*xxx*	*xxx*
xxx	*xxx*	*xxx*	*xxx*

> "***442. High Court's powers of revision.***—*(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 427, 430, 431 and 432 or on a Court of Session by section 344, and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 433.*
>
> *(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by advocate in his own defence.*
>
> *(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.*
>
> *(4) Where under this Sanhita an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.*
>
> *(5) Where under this Sanhita an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.*"

<u>Relevant Case Law</u>

8. The precedents germane to the matter(s) in issue are, thus:

Re: Nature, scope and ambit of Revisional Jurisdiction when petitioner-convict is not in custody.

(i) The Hon'ble Supreme Court in a Judgment titled as ***Bihari Prasad Singh versus The State of Bihar and another, 2000(10) SCC 346***, has held as under:

> "2. *The only question that requires consideration in the present case is whether the High Court while exercising its revisional jurisdiction can refuse to hear or entertain the matter on the ground that the accused has not surrendered.*

3. Under the provisions of Criminal Procedure Code, there is no such requirement though many High Courts in this country have made such provision in the respective rules of the High Court. But it is stated to us that there is no such rule in the Patna High Court Rules. In that view of the matter the High Court was not justified in rejecting the application for revision solely on the ground that the accused has not surrendered.

4. We, therefore, set aside the impugned order and direct that the revision application be taken up by the High Court on merits. We make it clear that our order does not disentitle the High Court to dismiss the revision on merits."

(ii) The Hon'ble Supreme Court in a Judgment titled as ***Vivek Rai and another versus High Court of Jharkhand Through Registrar General and others, 2015(12) SCC 86***; has held as under:

"*This writ petition has been filed under Article 32 of the Constitution of India seeking to declare Rule 159 of the High Court of Jharkhand Rules, 2001 as violative of Articles 14 and 21 of the Constitution and provisions of Sections 397 and 401 of the Code of Criminal Procedure, 1973 ("Cr.P.C."). The rule in question is as follows:*

"In the case of revision under Sections 397 and 401 of the Code of Criminal Procedure, 1973 arising out of conviction and sentence of imprisonment, the petitioner shall state whether the petition shall be accompanied by a certified copy of the relevant order. If he has not surrendered the petition shall be accompanied by an application seeking leave to surrender within a specified period. On sufficient cause if shown, the Bench may grant such time and on such conditions as it thinks and proper. No such revision shall be posted for admission unless the petitioner has surrendered to custody in the concerned Court."

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9. It has not been disputed even by the learned counsel for the High Court that the Rule does not affect the inherent power of the High Court to exempt the requirement of surrender in exceptional situations. It cannot thus, be argued that prohibition against posting of a revision petition for admission applies even to a situation where on an application of the petitioner, on a case being made

out, the Court, in exercise of its inherent power, considers it appropriate to grant exemption from surrender having regard to the nature and circumstances of a case. Thus, the exception as found in corresponding Supreme Court Rules that if the Court grants exemption from surrender and directs listing of a case, the Rule cannot stand in the way of the Court's exercise of such jurisdiction, has to be assumed in the impugned Rule."

(iii) The Bombay High Court in a Judgment titled as ***Ikba and Ors. versus The State of Maharashtra and Ors., 2024 (1) AIR BomR (Cri) 505***; has held as under:

"*11. In a given case, taking into consideration the facts and circumstances, the High Court in exercise of the revisional jurisdiction could exercise the discretion to suspend the sentence even without the accused surrendering himself or is arrested. Conversely, though it can still decide the revision, it may simultaneously direct that a warrant is issued as contemplated under Section 418, so that the law could take its course and ensure that the convict whose conviction has not been suspended suffers the sentence. If it is a matter of mischief, where the accused is seeking to misuse the process, as a custodian of law the High Court would be justified in issuing such a direction for his arrest albeit it would be independent of the issue regarding maintainability of the revision.*

12. We, therefore, answer the question referred to us as follows:

Though the High Court would not be justified in refusing to entertain the revision in the absence of the Rules for regulating listing of the revisions without surrender, it has powers to simultaneously ensure compliance with the provisions of Sections 353(5), 353(6) and Section 418 of the Code of Criminal Procedure under its inherent powers contained in Section 482 and in exercise of its supervisory jurisdiction under Section 397 read with Section 401 of Cr.P.C., and may suspend the sentence without the surrender or arrest of the accused, in its discretion."

(iv) The Hon'ble Supreme Court in a Judgment titled as ***Daulat Singh versus The State of Madhya Pradesh***, *Special Leave Petition*

(Criminal) Diary No(s).20900/2024, decided on 30.07.2024; has held as under:

> "*The High Court has held that the application filed by the petitioner in the revision seeking exemption to surrender is not maintainable in view of the specific provision contained in Rule 48 of Chapter 10 of the High Court of Madhya Pradesh Rules, 2008.*
>
> *5. Rule 48 of the 2008 Rules reads as follows:*
>
> > *"48. A memorandum of appeal or revision petition against conviction, except in cases where the sentence has been suspended by the Court below, shall contain a declaration to the effect that the convicted person is in custody or has surrendered after the conviction.*
> >
> > *Where the sentence has been so suspended, the factum of such suspension and its period shall be stated in the memorandum of appeal or revision petition, as also in the application under section 389 of the Code of Criminal Procedure, 1973.*
> >
> > *An application under section 389 of the Code of Criminal Procedure, 1973 shall, as far as possible, be in Format No. 11 and shall be accompanied by an affidavit of the appellant/applicant or some other person acquainted with the facts of the case."*
>
> *6. Bare perusal of the first part of Rule 48 would leave none in doubt that the same casts an obligation on the revisionist, in case he has to serve a sentence upon being convicted and the revision filed by him challenges the conviction and sentence, to surrender and disclose such fact in the revision petition. In other words, what such provision implies is that for a revision to be entertained by the High Court at the instance of a convict who has not otherwise obtained an order of suspension of sentence, to surrender in terms of the order(s) of the competent court(s) that tried him and dismissed his appeal.*
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> *xxx xxx xxx xxx*
>
> *xxx xxx xxx xxx*
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> *12. Significantly, the legislature having thought it fit to introduce a provision enabling convict to seek benefit of suspension of sentence pending an appeal did so by enacting Section 389 of the Code. The Code has no provision permitting an application to seek exemption from*

> *surrender. We are minded to hold that the omission in the Code with regard to providing an avenue for a convict suffering a sentence to seek exemption from surrender, pending a revision, is a conscious act of the legislature.*
>
> *13. We also find that there are specific provisions in the Supreme Court Rules, 2013 providing for an application for exemption from surrendering to be made, but similar such provision is not otherwise available in the 2008 Rules framed by the High Court."*

Analysis (re law)

9. The High Court wields a crucial revisional jurisdiction under Sections 397 and 401 of the Cr.P.C./ Sections 438 and 442 of the BNSS. This jurisdiction is fundamentally supervisory in nature, empowering the superior courts to scrutinize the records of any subordinate criminal court. The primary objective thereof is to ascertain the correctness, legality, or propriety of any finding, sentence, or order passed by the subordinate court, and to ensure the regularity of its proceedings. The legislative design behind these provisions is to vest broad powers in the revisional court(s). This expansive language reflects a clear intention to establish an effective mechanism for rectifying any manifest error, illegality, or impropriety that may have occurred in the proceedings before a subordinate court. In essence, revisional jurisdiction serves as a vital avenue for an aggrieved individual to seek redress against an erroneous order or proceeding of a subordinate court. However, even in this broad grant of power, the legislature, in its wisdom, has imposed specific, circumscribed limitations. The revisional jurisdiction, much like a carefully calibrated instrument, is explicitly unavailable against interlocutory orders and, crucially, against orders which are appealable in nature.

A statute, being an edict of the legislature—it ought to be construed in accordance with the intent of its framers, while the duty of judicature is to act upon the true intention of the legislature—***the mens or sententia legis***. The paramount duty of the judicature is *NOT* to legislate *de novo* but to discern and act upon this underlying legislative purpose. *Ergo*, when the legislature, in its deliberative wisdom, has chosen not to impose any specific restriction or condition on the exercise of a particular remedy, it is demonstrably inappropriate for the court to engraft such a restriction before the remedy can be availed. This judicial insertion would not only be an act of judicial overreach, but it would also amount to *'reading into the statute'* something that is not there. This imperative becomes even more pronounced when the provision under scrutiny is remedial in nature, designed to offer succour and redress to an aggrieved person. For a court to introduce fetters that the legislature has conspicuously refrained from imposing, would tantamount to *clip the wings of justice*, effectively curtailing a right or a benefit, explicitly bestowed, by the legislative authority. The plain language of Section 397 and Section 401 of the Cr.P.C./ Section 438 and Section 442 of the BNSS, is clear and unambiguous. As the venerable legal maxim goes, ***'Verba legis non est recedendum'***—from the words of law, there should be no departure, this Court is, therefore, duty-bound to meticulously infer the legislative intent directly, from the explicit terms employed by the legislature.

Neither Section 397 Cr.P.C./Section 438 BNSS, nor Section 401 Cr.P.C./Section 442 BNSS, nor indeed any extant rules framed by this High Court on its administrative side, contain any provision or even a subtle

hint suggesting non-maintainability of a revision petition in the absence of petitioner-convict having surrendered before the appellate court. Imposing such a fetter on the maintainability of revision petition, or indeed on an application for exemption from surrender and/or an application for suspension of sentence, would be to restrict a right which has been explicitly conferred, by the legislature.

To superimpose any other fetters or to create procedural impediments to the exercise of this invaluable remedial jurisdiction, particularly in the conspicuous absence of explicit legislative direction or extant rules framed by the High Court on its administrative side, would be akin to constructing an artificial barrier to justice.

10. However, certain Hon'ble High Courts, in their respective administrative wisdom, have framed rules wherein there is a specific rule mandating the surrender of a convicted person as a *condition precedent* for the maintainability of a revision petition and/or an application for suspension of sentence etc., filed along with it. In such situations, the legislative silence in Sections 397 & 401 Cr.P.C./ Sections 438 & 442 BNSS, insofar as they do not expressly stipulate such a *condition precedent,* stands supplemented by the extant statutory rules framed by the concerned Hon'ble High Court. Consequently, where such a rule exists, the same acquires binding force.

The Hon'ble Supreme Court in the case of ***Bihari Prasad Singh*** (supra); while dealing with a matter pertaining to Hon'ble Patna High Court; has held that the High Court was not justified in rejecting the revision petition solely on the ground that the accused had not surrendered since there was no such provision, mandating surrender of accused for

maintainability of revision petition, in the Patna High Court Rules. Further, the Hon'ble Supreme Court in the case of ***Vivek Rai*** (supra); while dealing with a matter pertaining to the Hon'ble Jharkhand High Court; held that since the Jharkhand High Court Rules contain a specific provision for the petitioner-convict to be in custody at the time of hearing of the revision petition, such revision petition (wherein the petitioner-accused) is not in custody was not maintainable as per such extant High Court Rules but, yet lent maintainability under inherent powers of the High Court. To similar effect is the *dicta* of the judgment of the Hon'ble Bombay High Court in the case of ***Ikba*** (supra). More recently, the Hon'ble Supreme Court in the case of ***Daulat Singh*** (supra); while dealing with the Madhya Pradesh High Court Rules has held that the revision (as also the application for suspension of sentence) was not maintainable in view of the specific provision in the Madhya Pradesh High Court Rules. *Ergo,* it is ineluctable that, the provisions contained in the extant High Court Rules govern this field as the relevant statutory provisions in Cr.P.C./BNSS are silent in this regard.

11. In the extant rules framed by this High Court, there is not even a subtle hint, much less any specific provision, suggesting non-maintainability of a revision petition as also application for suspension of sentence etc. in the absence of petitioner-convict having surrendered before the Appellate Court or being otherwise in custody at the time of filing/hearing of such revision petition etc.

Hence, there is no fetter upon this Court to entertain and hear a revision petition (as also any application for suspension of sentence etc.) when such petitioner/applicant is not in custody.

However, the petitioner/applicant in such a case ought to show tangible cause for not being present before the concerned Appellate Court to receive his judgment and resultantly not being in custody at the time of filing/hearing of his revision petition (as along with application for suspension of sentence etc.). In other words, though such revision petition etc. would be *maintainable* in *stricto-sense* but desirability to entertain the same would depend upon the cause put forth by such petitioner. To say, by way of simile, the difference between "*maintainability of a petition*" and "*desirability to entertain a petition*" is as distinct and stark as the difference between chalk and cheese. The desirability of entertaining such a petition is not automatic but is contingent upon several factors, including, but not limited to, the overall conduct of petitioner-accused; the sufficiency & bona fides of the reasons advanced for non-appearance before the Appellate Court; demonstrable submission of petitioner-accused to the jurisdiction & authority of the courts of law. In this context, the Court, while exercising its revisional jurisdiction, is not merely to be guided by the absence of a procedural bar but is enjoined to exercise a judicious discretion. Such judicial discretion ought to be exercised, not in opposition to *but* in accordance with established principles of justice, equity and good conscience. Where the conduct of such petitioner-accused is tainted with elements of evasion, contumacious disregard or conscious circumvention of the Court's authority, the balance must necessarily tilt against the desirability of entertaining such a petition. It is imperative that the admission of a revision petition and any concomitant prayer for suspension of sentence ought not to carry even a semblance of condonation for such inexplicable

defiance or deliberate dereliction of process of law. To do otherwise would amount to incentivizing indiscipline and would erode the sanctity of judicial proceedings, which are predicated upon respect for, & submission to, the jurisdiction of the Court.

It goes without saying that it is neither pragmatic nor feasible to lay any universal exhaustive yardstick or inexorable set of guidelines for adjudication of such a plea as every case has its own tangled knot of specifics, which has to be taken into account by the Court which is *seisin* of the matter in question. It was said by Lord Denning, an observation which met with approval by the Hon'ble Supreme Court, that:

> *".....Each case depends on its own facts, and a close similarity between one case and another is not enough, because even a single significant detail may alter the entire aspect. In deciding such case, one should avoid the temptation to decide case (As said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, its broad resemblance to another case is not all decisive."*

12. As a sequitur to the above ratiocination, the following postulates emerge:

I. A criminal revision petition against the judgments of conviction (as also an application for suspension of sentence, etc.) is maintainable before this High Court, without the petitioner-accused having surrendered or being in custody, in the absence of any rule in the extant Punjab and Haryana High Court Rules/Orders proscribing such maintainability.

II (i) The mere maintainability of a revision petition (as also an accompanying application for suspension of sentence) does not, *ipso facto*, translate into its desirability; the latter is a matter of judicial discretion —

which is inexorably linked to the bona fides and overall conduct of the petitioner-accused, including the sufficiency of reasons proffered for non-appearance before the Appellate Court.

(ii) Where the conduct of the petitioner-accused reflects evasion or contumacious disregard of process of law, the Court must lean against the grant of suspension of sentence, *lest*, it may tantamount to condoning inexplicable defiance of judicial process.

(iii) No universal guidelines or parameters can possibly be enumerated for exercise of this judicial discretion by this High Court while considering such an application for suspension of sentence.

Analysis re facts

13. Now this Court reverts to the facts of the case in hand to delve thereupon.

In view of the above rumination, the Criminal Revision Petition and the application(s) filed therein are held to be maintainable, despite the petitioner not being in custody.

The *learned ASJ*, vide its judgment dated 27.05.2025, dismissed the appeal filed by the petitioner (herein), who was not present before the said Appellate Court to receive the judgment. An application (CRM-26808-2025) has been preferred before this Court seeking time to surrender, on account of a medical exigency—namely, heart-related issue(s). The petitioner is stated to be a man aged 62 years. Keeping in view the factual matrix of the case in hand, this Court deems it appropriate to afford time to the petitioner to surrender before the concerned trial Court.

14. In view of the prevenient discussion, it is directed as under:

(i) The petitioner is directed to surrender before the learned trial Court on or before 18.08.2025. In case the petitioner so surrenders, the said trial Court shall send him to custody as per law. In case the petitioner fails to surrender, the said trial Court is directed to take steps to take the petitioner into custody, forthwith. CRM-26808-2025 (application for seeking time to surrender) stands disposed off accordingly.

(ii) The main criminal revision petition and the application seeking suspension of sentence (CRM-26809-2025) be put up for further hearing in the motion list on 01.09.2025, along with the records (in original) from the concerned Magisterial as also Appellate/Sessions Court.

(SUMEET GOEL)
JUDGE

August, 05, 2025
Ajay/Mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No