

However, the court shall not direct such release



However, 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. The conditions to release certain offenders under Section 4 of the Probation of Offenders Act

are: (1) Any person is found guilty of having committed an offence; (2) The offence committed must not be one punishable with death or imprisonment of life; (3) The Court must opine that it is expedient to release him on probation of good conduct instead of sentencing him to any punishment; (4) The Court may form such opinion having regard to: (i) the circumstances of the case; (ii) the nature of the offence; and (iii) the character of the offender; and (5) The offender or surety must have a fixed place of abode or regular occupation in a place situate within the jurisdiction of the Court. The word 'character' is not defined in the Act.

Hence, it must be given the ordinary meaning. The dictionary meaning of 'character' is mental or moral nature of a person that make him different from others. The provision of Section 4 of the Probation of Offenders Act would have effected notwithstanding any other law for the time being in force.

The mere fact that no earlier connection stands proved against the accused will not necessarily imply that it is the first offence which he had in fact committed. The provision of Section 4 vests in the Court discretion to release a person found guilty of having committed an offence not punishable with death or imprisonment for life. It is only when the Court forms an opinion that in a given case the offender should be released on probation of good conduct and then the Court acts as provided in Section 11. In the case of offenders who are above the age of 21 years, absolute discretion is given to the Court to release them after admonition or on probation of good conduct, and in the case of offenders below the age of 21 years an injunction is issued to the Court not to sentence them to imprisonment and it is not desirable to

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deal with them under Sections 3 and 4 of the Act where the accused is convicted of an offence punishable with imprisonment for life, benefit cannot be given under Section 4 of the Act. Section 4(1) of the Probation of Offenders Act does not contain any restriction that the offender must be 21 or below that age although this restriction is found in Section 6. In *Ishar Das v.*

*State of Punjab*, the Supreme Court held that sub-section (1) of Section 4 of the Act does not distinct between persons of the age of more than 21 years and those of the age of less than 21 years and the sub-section is applicable to persons of all ages subject to certain conditions which have been specified therein. Under Section 4 of the Act, the nature of offence is the major criteria and his age would be a relevant factor. The circumstance in which the offence is committed is a third important consideration. The Court, while invoking Section 4 of the Act, does not deal with conviction but it only deals with the sentence which the offender has to undergo. Instead of sentencing the offender, the Court releases him on probation of good conduct. The conviction, however, remains untouched. The order of release on probation has been made permissible by the statute with a humanist point of view in order to reform youthful offenders and to prevent them from becoming hardened criminals.

The Court, before making any order of release on probation, shall take into consideration the report of the probation officer concerned in relation to the case. The Court shall pass the supervision order when an offender is released on, probation if it is of the opinion that such order is in the interest of the offender and also in the interest of public. The Court shall require the

offender, before he is released to enter into a bond to observe the conditions specified in the supervision order.

The bond may be required to be furnished either with or without sureties.

The Court shall explain to the offender the terms and conditions of the order and extend copies to the supervisor, the sureties and the probation officer concerned. The period of probation will be such as the Court may direct but it will not exceed three years.

The case laws of the Applicability of Section 4 of the Act are: In Harikishan and State of Haryana v. Sukhbir Singh, the Court held that the extension of benefit . of the release on probation is applicable where there was no previous history of enmity between the parties and the occurrence was an outcome of a sudden flare up. In Rajbir v.

State of Haryana, the Court has held that the benefit of the provisions of Section 4 of the Act can be given to an offender where accused is a Government servant and is likely to lose job by imprisonment. In Mani Singh v. State of Bihar and Others, the Court has held that the benefit of probation with conditions can be given to a Government servant where the conviction under Section 379 of the Indian Penal Code and Section 27 of the Arms Act would harm him with serious consequences including dismissal from service. In Keshav Sitaram v. State of Maharashtra, the Court has held that in the case of petty theft, normally benefit under Section 360 of the Code of Civil Procedure or Sections 3 and 4 of the Probation of Offenders Act to be given to the offender. Case laws relating to Non-applicability of Section 4 of the Act are: In Ahmed v. State of Rajasthan, the Court has held that any person who

had indulged in certain criminal acts resulting in explosive situation leading to communal tension cannot be given the benefit under the Probation of Offenders Act.

In *Devki v. State of Haryana*, the Court has held that the benefit under the Probation of Offenders Act shall not be extended to an accused person wherein found guilty of abducting a teenage girl and forcing her to have sexual intercourse. In *Ippili Trinadha Rao v. State of Andhra Pradesh*, the Court has held that if the beneficial provision of the Act is extended to the offences like one punishable under Section 354 of Indian Penal Code for outraging the modesty of a teenaged girl and of like offences on women, would not only encourage further escalation of the crime but also would become difficult to check or arrest the perpetration of those crimes imperil the modesty of several innocent girls.

In *Phaul Singh v. State of Haryana*, the Court has held that the benefit of the Act cannot be given to an offender where he had committed heinous crime of rape. In *State of Karnataka v. D. S. Prabhakar Bhatt*, it was held that where the accused is convicted under Section 307 of the Indian Penal Code, the benefit under Section 4 of the Probation of Offenders Act, 1958 cannot be extended to him because the offence is punishable with life imprisonment. In *Uttam Singh v. State*, it was held that an offender who was convicted for offence under Section 292 of the Indian Penal Code for selling of playing cards with obscene pictures could not be released under Section 4 of the Probation of Offenders Act in view of the potential danger of the accused's activity in that nefarious trade affecting the morals of society particularly of young.

In *Lai Biak Sanga v. The State*, the Court has held that the benefit under Section 360 of the Criminal Procedure Code or under Section 4 of the Probation of Offenders Act cannot be granted to an offender who smuggled large scale heroin as it is an offence against Dangerous Drugs Act and is also a social crime. In *State of Maharashtra v. Natverlal*, the Court has held that smuggling of gold affects public revenue, public economy and also escapes detection and such person cannot be given benefit under the Probation of Offenders Act. In *Bhagwan Das v.*

*Inspecting Assistant Commissioner*, it is held that where accused was convicted for an offence under Section 276-CC of the Income Tax Act, he cannot be released on probation in view of Section 292-A of the Income Tax Act. In *Shyam Pradhan v. State*, it is held that where the assault is a pre-planned one on his brother inflicting injuries, benefit of probation cannot be given to such accused. In *Ram Kumar Agarwal v. State of Orissa*, it is held that where an accused is convicted for an economic offence, he is not entitled for the benefits under the Probation of Offenders Act. In *Bhola Singh v. State of Punjab*, it is held that the petitioner who was found guilty of possessing 35 bottles of illicit liquor and was convicted for transport and dealing of illicit liquor which is an offence under Section 61(1) (c) of the Punjab Excise Act is not entitled to release on probation merely because he was aged 22 years and is a first offender considering the hazardous nature and ill effect of the offence.

In *State of Karnataka v. Shivappa*, the Court has held that the offender charged under Section 161 of the Indian Penal Code read with Section 5(2) and 5(1) (d) of the Prevention of Corruption Act, 1947 for accepting bribe is

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not entitled for the benefit of Probation of Offenders Act. In *Jai Narayan v. Delhi Municipality*, the Court has held that an offender who is convicted and punished under the Prevention of Food Adulteration Act, 1954 cannot be entitled for the benefit of the Probation of Offenders Act. In *Motty Phillipose and Another v. State of Kerala*, the first accused obtained admission to Medical College on strength of fake marks list showing it as genuine document. Second accused abetted that offence to steal a seat for his son in medical college.

Therefore, offences were committed against society in general depriving legitimate entitlement of others who had worked hard and genuinely scored higher marks than the first accused. Thus, it was held that in circumstances and the nature of offence committed, Section 4 of the Probation Offenders Act cannot be applied to release the accused on probation.