

Before M. M. Punchhi, J.
 CHANNA SINGH,—Petitioner

versus

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Criminal Writ Petition No. 364 of 1983.

October 26, 1983.

Code of Criminal Procedure (II of 1974)—Section 428—Punjab Jail Manual—Paragraph 516-B and State Government instructions—Indian Penal Code (XLV of 1860)—Section 60—Period spent by a convict in jail as an under trial—When to be reckoned in computing remissions to secure pre-mature release—Guiding principles.

Held, that 'imprisonment for life' must be regarded as 'rigorous imprisonment for life' and section 60 of the Indian Penal Code, 1860 is, therefore, not applicable with the result that the Court has no choice in the quality of sentence. In several other provisions of the said Code, the Court has power to impose an imprisonment for either description, i.e., rigorous or simple or even partly one and partly the other. The under-trial period obviously does not entail any labour under strict discipline whereas rigorous imprisonment partakes that character. Simple imprisonment, on the other hand, involves no such rigour. Thus, for imprisonments in which the Court had a choice to lay the quality of imprisonment, the under-trial period was to be set off, against the term of imprisonment imposed by the Court under section 428 of the Code of Criminal Procedure, 1973, as if of the quality deemingly imposed by the Court, and thus the liability of such person to undergo imprisonment 'shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.'

(Para 5).

Petition under Articles 226/227 of the Constitution of India praying that :—

- (i) The petitioner be ordered to be set at liberty forthwith; or
- (ii) The State Government be directed by means of an appropriate writ, order or direction to call for the premature release of the petitioner and decide appropriately ;
- (iii) The petitioner be ordered to be released on bail until the State Government decide the premature release case of the petitioner;
- (iv) Any other writ, order or direction as this Hon'ble Court may deem appropriate in the circumstances of the case be issued ;
- (v) Filing of affidavit may also be dispensed with ;

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B. S. Malik, Advocate, for the Petitioner.

D. N. Rampal, Advocate, for A.G., Punjab, for the Respondent.

JUDGMENT

M. M. Punchhi, J. (Oral).

(1) The petitioner has approached this Court under Article 226 of the Constitution bemoaning that the Punjab Government has not considered his case for premature release under the provisions of paragraph 516-B of the Punjab Jail Manual read with the Government instructions relevant for the purpose. He claims that he has already completed more than 5 years and 5 months substantive sentence and if a period of 1 year and 4 months is added thereto, which he spent as an under-trial, he satisfies one of the two important requirements of the aforesaid provision by having undergone 6 years' actual sentence. Besides that, he claims that in that event, he would also qualify the second requirement of completing 10 years' sentence inclusive of remissions. Thus, the principal question which has been raised is whether the period spent by a convict in jail as an under-trial is to be reckoned for the purposes of computation of the two periods envisaged under the aforesaid paragraph of the Punjab Jail Manual and the relevant instructions.

(2) In *Kartar Singh v. The State of Haryana* (1) a Bench of three Hon'ble Judges of the Supreme Court, while considering such a question relating to Haryana prisoners, had interpreted paragraph 516-B of the Punjab Jail Manual as applicable to Haryana, in the light of Section 428 of the Code of Criminal Procedure and had authoritatively held that the benefit of under-trial period is not to be given to life convicts. Their Lordships, while holding so, had occasion to deal with instructions of the State of Haryana dated 2nd February, 1981 whereunder it was ordered that for the purpose of considering cases of premature release and calculating 8½ years' substantive sentence and 14 years imprisonment including remissions, the benefit of under-trial period is not to be given to life convicts, who have been convicted before 18th December, 1978. The learned counsel for the petitioner attempted to steer through the said Supreme Court judgment by contending that there was no similar instruction in the State of Punjab and sequally the rule laid down

(1) A.I.R. 1982 S.C. 1439.

in *Kartar Singh's case* (supra) was not applicable to the case of the petitioner. The learned counsel for the State has met the argument by placing before me for perusal Punjab Government letter No. 11/88/82-5JL/23056, dated 14th December, 1982 in which, on the basis of the judgment in *Kartar Singh's case* (supra), instructions have been issued that the benefit of set off contemplated under Section 428 of the Code of Criminal Procedure would not be available to life convicts and the premature release cases of such convicts may, in future, be sent without giving the benefit of undertrial period undergone by them. The said Punjab Government's instruction in that regard is a complete answer to the argument of the learned counsel for the petitioner and thus the same is repelled.

(3) The second contention raised is that in *Sukh Lal Hansda and others v. The State of Bengal* (2) another Bench of three Hon'ble Judges of the Supreme Court have ruled that for the purpose of considering whether the case of a prisoner should be considered for premature release on the completion of 14 years under sub-rule (1) of rule 591 of the West Bengal Jail Code or on completion of 20 years under Part-4, rule 29 of the same Code, they see no reason, why the period of imprisonment undergone by such a person as an under-trial should not be taken into account. He contends that this being a later judgment should prevail over *Kartar Singh's case* (supra).

(4) As is plain, in *Sukh Lal's case*, their Lordships of the Supreme Court did not advert to their earlier decision in *Kartar Singh's case* (supra). The earlier case was specifically relating to paragraph 516-B of the Punjab Jail Manual and the relevant instructions. That governs the case in hand specifically. And, on the other hand, *Sukh Lal's case* pertains to the relevant provision, as contained in the West Bengal Jail Code. But even if there be no conflict between the two, leverage seemingly has only been given to treat the under-trial period as a period of imprisonment undergone by an under-trial.

(5) In *Naib Singh v. State of Punjab and others* (3) a Bench of two Hon'ble Judges of the Supreme Court has held that "imprisonment for life" must be regarded as equivalent to "rigorous imprisonment for life". It has further been held that Section 60, Indian Penal Code, was inapplicable and the Court had no choice in the

(2) Writ Petition (Crl.) Nos. 1128-29/82.

(3) A.I.R. 1983 S.C. 855.

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quality of sentence. "Imprisonment for life" was always meant to be "rigorous imprisonment for life" in Section 60, Indian Penal Code. In several other provisions of the said Code, the Court has power to impose an imprisonment for either description, i.e., rigorous or simple or even partly one and partly the other. The under-trial period obviously does not entail any labour under strict discipline whereas rigorous imprisonment partakes that character. Simple imprisonment, on the other hand, involves no such rigour. Thus, it seems to me that for imprisonments in which the Court had a choice to lay the quality of imprisonment, the under-trial period was to be set off, against the term of imprisonment imposed by the Court under Section 428, Criminal Procedure Code, as if of the quality deemingly imposed by the Court, and thus the liability of such person to undergo imprisonment "shall be restricted to the remainder, if any, of the term of imprisonment imposed on him." *Kartar Singh's case* (supra) is to the point in that regard. The verdict in *Sukh Lal's case* (supra) in the context of the West Bengal Jail Code has not gone to the extent that the under-trial period of a prisoner has to be taken as a sentence actually undergone. The said case can be of no assistance to the cause of petitioner and thus the contention raised is repelled.

(6) To be fair to the learned counsel for the petitioner, I must take into account a decision rendered by D. S. Tewatia, J. in *Kirpal Singh v. State of Punjab* (4) in which relying on *Sukh Lal's case* (supra), it was treated that the under-trial period had to be counted "for the purpose of seeing as to whether he has been in actual jail custody for the period of six years or not". Unfortunately, *Kartar Singh's case* (supra) was not brought to the notice of D. S. Tewatia J. Even pointed attention was not invited of the Hon'ble Judge to the distinctive features of *Sukh Lal's case* (supra); to the mandate of provisions of the Punjab Jail Manual and the relevant instructions which take into account not "actual jail custody" but "actual serving of jail sentence", and for the nature of life sentence which qualitatively is always rigorous. That decision, to my mind, does not further the cause of the petitioner and is distinguishable. On the other hand, the learned counsel for the State relied on *Balwant Singh v. The State of Punjab* (5) in which the Hon'ble Judge took into account both the Supreme Court

(4) Cr.W. No. 141 of 83 decided on 6-10-83.

(5) Cr.W. 374 of 83 decided on 15-9-83.

judgments-afore-referred to and came to the view that the under-trial period could not be set off towards the period of actual sentence which a life convict was required to undergo under the Punjab Jail Manual and the instructions issued thereunder, before he becomes eligible for consideration of his premature release. I am in respectful agreement with the view expressed therein. This decision clinches the issue.

(7) For the view I have taken, there is no merit in this petition which fails and is hereby dismissed.

N.K.S.