

Mithu Singh v. State of Punjab and another (N. C. Jain, J.)

Thus, conditions 4(ii) to (iv) of the Prospectus of the respondent-University are quite in order, perfectly valid and in the public interest. There is no violation of rules of natural justice as well.

(8) In result, this petition fails and is accordingly dismissed. However, there is no order as to costs.

P.C.G.

Before : N. C. Jain, J.

MITHU SINGH,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Criminal Writ Petition No. 56 of 1988

October 14, 1989.

Constitution of India, 1950—Arts. 226 and 227, 14, 19, 21—Punjab Jail Manual—Paragraph 516—B—Petitioner convicted for murdering four persons and sentenced to life imprisonment—Petitioner undergoing imprisonment for about 11 years—Petitioner also earning some remissions—Petitioner claiming Premature release—Conditions for such release—Stated.

Held, that the following principles of law can be the guidelines for deciding the cases of premature release:—

- (i) the heinousness or gravity of the offence is no legal ground to discriminate the case of one accused with the cases of other accused as all the accused have to be treated equally under Article 14 of the Constitution of India;
- (ii) the apprehension of breach of peace and tranquility can also be no ground to withhold the release of a life convict which he is otherwise entitled to within the meaning and ambit of the provisions of paragraph 516-B of the Punjab Jail Manual;

- (iii) Ordinarily a life convict whether he has committed one murder or more is entitled to be released prematurely after completion of 8 years 6 months actual sentence and 14 years sentence including remissions under the unamended provisions of S. 432 of the Code of Criminal Procedure until and unless there are exceptional, special and rare facts by which the Court of law is compelled to take a contrary view. The existence of such special circumstances would depend on facts of each case;
- (iv) The Court while dealing with a petition under Article 226 of the Constitution of India can order the release of a life convict and not this that the Court can only direct the Government to consider the case for premature release of a life convict. In case of heinous crime the Court can demand heavier security from the accused for maintaining peace and good behaviour.

(Para 6).

Petition under Articles 226/227 of the Constitution of India praying that the entire record concerning the case of the petitioner be summoned and after perusal of the same, this Hon'ble Court may be pleased to issue:—

- (i) *a writ in the nature of Habeas Corpus holding that the detenu has been deprived of the benefit of premature release illegally and that the impugned order/action of the State Government denying release to the detenu is violative of Articles 14, 19 and 21 of the Constitution of India;*
- (ii) *a direction be issued to release the detenu forthwith unconditionally as he fulfills the requisite conditions for the grant of premature release;*
- (iii) *any other order which in the circumstances of this case, this Hon'ble court may deems fit and proper, be also passed.*

It is further prayed:—

- (i) *an ad-interim order or direction be issued directing the respondents not to arrest the petitioner and to allow him to continue on bail in terms of the directions given by this Hon'ble Court,—vide Annexure P/4.*
- (ii) *issuance of advance notices in the present case at this stage be dispensed with;*
- (iii) *filing of certified copies of the Annexures P/1 to P/7 be dispensed with;*
- (iv) *cost of the petition be awarded to the petitioner.*

V. K. Jindal, Advocate, for the Petitioner.

Charu Tuli, Advocate, for the Respondents.

Mithu Singh v. State of Punjab and another (N. C. Jain, J.)

JUDGMENT

N. C. Jain, J.

(1) The facts leading to the filing of the petition under Articles 226/227 of the Constitution of India for the issuance of a writ for *habeas corpus* for releasing the petitioner prematurely lie in a very narrow compass. The petitioner was tried for the offence of murdering as many as four persons for which he was convicted under section 302 of the Indian Penal Code. He was sentenced to undergo imprisonment for life on August 20, 1977. He has actually spent in detention a period of 11 years 9 months and 19 days whereas remissions were granted by the State Government as well as by the Jail Authorities to the tune of 7 years and 8 months. Therefore, in all he has undergone more than 14 years sentence including the remissions out of which admittedly, more than 8 years 6 months is the actual sentence which he has undergone. There, is no dispute as regards this factual position is concerned.

(2) The petitioner has filed the present petition for his premature release on the grounds that his case for premature release has wrongly been declined three times and that the ground that the release of the petitioner is likely to prove hazardous to peace and tranquillity in the locality is no legal ground to detain him in prison any longer. Mr. V. K. Jindal learned counsel for the petitioner has argued that simply because the petitioner is guilty of commission of as many as four murders, the same is no ground to decline the premature release of a convict when he has undergone the necessary sentence which entitles him to be released within the meaning and ambit of provisions of para 516-B of the Punjab Jail Manual. There is no denying the fact that since the petitioner was convicted and sentenced before December 18, 1978, that is, before the amendment and insertion of Section 433-A in the Code of Criminal Procedure, the petitioner's case has to be dealt with in accordance with the provisions of Section 432 of the Code of Criminal Procedure read with paragraph 516-B of the Punjab Jail Manual which is to be interpreted in this judgment is reproduced below:—

“516-B. *Action to be taken on expiry of 14 years.*—(2) With the exception of females and of males who were under 20 years of age at the time of commission of offence, the cases of every convicted prisoner sentenced to :—(G. of I Resolution No. 159—1667, dated 6th September, 1905 and P.G. No. 18608 Jails, dated 28th June, 1920).

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- (i) Imprisonment/s for life.
 - (ii) Imprisonment/s for life and term/s of imprisonment.
 - (iii) Commulative periods of Rigorous imprisonment aggregating to more than 14 years.
 - (iv) a single sentence of more than 20 years:—
 - (a) who has undergone a period of detention in jail amounting together with remission earned to 14 years; shall be submitted through the Inspector-General of Prisons, Punjab for the orders of the State Government.”

(3) While interpreting the provisions of Paragraph 516-B of the Punjab Jail Manual, the learned counsel for the petitioner has vehemently argued that no distinction has been made in Paragraph 516-B, as regards the consideration of a case of an accused for premature release is concerned, whether a particular accused has committed one murder or more than one murder. In other words, his argument is that the gravity or heinousness of the crime is no ground for not releasing the petitioner when he is entitled to be released in law. On the other hand, Mrs. Charu Tuli, learned counsel for the respondents who has argued the case rather with greater vehemence, submits that the gravity of the offence is a major factor which must weigh with the Court for declining the premature release and that the heinousness of the crime should both be legal as well as moral factor for dismissing a petition of premature release.

(4) After considering the contentions advanced by the learned counsel for the parties, who have ably argued the case, I am of the opinion that the gravity or heinousness of offence is no ground to decline the benefit of the provisions of Paragraph 516-B of the Punjab Jail Manual. In my view, the gravity of the offence is a factor for awarding the sentence. An accused in view of seriousness of the offence can be ordered to be hanged but once a Court of law after taking the facts and circumstances into consideration in its wisdom has thought it appropriate to award life imprisonment, that accused becomes an ordinary life convict and the law does not make any distinction between that life convict who has committed more than one murder and another life convict who has committed only one murder. To put any other interpretation to the provisions of Paragraph 516-B of the Punjab Jail Manual, it would amount to doing violation to the provisions of the Paragraph. Had the concerned

Mithu Singh v. State of Punjab and another (N. C. Jain, J.)

authorities thought it appropriate, they could have while enacting the provisions of Paragraph 516-B of the Punjab Jail Manual, would have made any provision to the contrary or different guidelines could be laid down for dealing with the cases of those accused who have committed one murder and about the accused persons who have committed more than one murder. After an accused has started undergoing the sentence imposed upon him, his conduct in Jail has to be seen. The petitioner in the instant case was released several times on parole and furlough and he maintained peace and no untoward incident happened. The circumstances and the motive for the offence or even bitter feelings of the complainant — par whose relations have lost their lives would not diminish even after the expiry of full period of 20 years of sentence. To the similar effect are the observations made by a Division Bench of Delhi High Court in *Harbhajan Singh v. Lt. Governor of Delhi and others*, (1). Their Lordship of Delhi High Court, of course, were not dealing with a case where more than one murder was committed, yet it would not make any difference in law. While dealing with the similar situation, a Division Bench of Madhya Pradesh High Court in *Nainaram and another v. State of Madhya Pradesh and another*, (2) observed that the heinousness of crime was no legal ground for declining the premature release of a life convict. In that case the accused were sentenced for committing triple murder and their petition was allowed. A Division Bench of Delhi High Court in another case in *Rakesh Kaushik and others vs. Delhi Administration and another* (3), again observed that the objection of the State that there was a party-faction and the premature release of a life convict may cause mishap was not a valid ground for declining a petition for premature release.

(5) Faced with this situation, Mrs. Charu Tuli, Advocate for the respondents, argued that this Court in a petition under Article 226/227 of the Constitution of India can only order the concerned authorities to consider the case of the petitioner for releasing him prematurely and that the release order cannot be passed by this Court. To support her argument, she placed reliance upon a Division Bench of this Court reported as *Harbans Singh v. State of Punjab and others*, (4). But the observations made in that case (*Harbans Singh's case*, (supra) are not helpful to the respondents because there

(1) 1988(2) Recent Criminal Reports 125.

(2) 1987 CrL. L.J. 1981.

(3) 1986(2) Recent Criminal Reports 171.

(4) ILR 1987(2) Pb. and Hy. 427.

the question which fell for determination of their Lordships was, whether an appropriate Government was required to follow the principles of natural justice and the rules of *audi alteram partem* in considering the question of remission of a convict. In other words, the question which arose for their Lordships' consideration was, whether a convict has got a right to be heard in the matter of remission of his sentence or not. As far as the jurisdiction of this Court in ordering the release of an accused is concerned, the Hon'ble Supreme Court in *Bhagwat Saran and others vs. State of U.P. and others*, (5), ordered the release of a prisoner. In fact, the Apex Court was considering the case of premature release.

(6) In view of the discussion made above, the following principles of law in my opinion can be the guidelines for deciding the cases of premature release:—

- (i) the heinousness or gravity of the offence is no legal ground to discriminate the case of one accused with the cases of other accused as all the accused have to be treated equally, under Article 14 of the Constitution of India;
- (ii) the apprehension of breach of peace and tranquility can also be no ground to withhold the release of a life convict which he is otherwise entitled to within the meaning and ambit of the provisions of Paragraph 516-B of the Punjab Jail Manual;
- (iii) ordinarily a life convict whether he has committed one murder or more is entitled to be released prematurely after completion of 3 years 6 months actual sentence and 14 years sentence including remissions under the unamended provisions of Section 432 of the Code of Criminal Procedure until and unless there are exceptional, special and rare facts by which the Court of law is compelled to take a contrary view. The existence of such special circumstances would depend on facts of each case;
- (iv) the Court while dealing with a petition under Article 226 of the Constitution of India can order the release of a life convict and not this that the Court can only direct the Government to consider the case for premature release of a life convict. In case of heinous crime the

(5) 1983(1) Chandigarh Law Reporter 504.

Mithu Singh v. State of Punjab and another (N. C. Jain, J.)

Court can demand heavier security from the accused for maintaining peace and good behaviour.

(7) In view of unequivocal enunciation of law in the aforementioned judicial pronouncements and in view of my observations made above and the principles laid down in the above para, I am of the view that the petitioner is entitled to be released prematurely subject to his furnishing a personal bond in the sum of Rs. 20,000 with two sureties in the like amount to the satisfaction of District Magistrate, Bhatinda with an undertaking to maintain peace and be of good behaviour during the remaining un-expired period of imprisonment. Ordinarily, the amount of surety should not exceed Rs. 5,000. However, looking to the facts and circumstances of this case, the amount of surety has been enhanced to Rs. 20,000.

(8) Before parting with the judgment, this Court must express a wish and advise the accused petitioner not to indulge in any unlawful activity in future and that he should try to be as good a citizen as the others are and this is the only course by adoption of which he can show his repentance.

P.C.G.