

Before K.P.S. Sandhu, J.

MUKHTIAR SINGH,—Petitioner

versus

STATE OF PUNJAB and another,—Respondents.

Criminal Writ Petition No. 735 of 1985.

November 25, 1985.

*Manual for the Superintendence and Management of Jails in Punjab—Paragraphs 631 and 647—Code of Criminal Procedure (II of 1974)—Sections 432 and 433—Convict serving life imprisonment for murder and completing 20 years of sentence inclusive of remissions—Such convict—Whether entitled to automatic release by Superintendent Jail—Formal order of Government remitting the remaining part of the sentence—Whether necessary.*

the accused as it is not possible to fix a particular period of the prisoner's death; so any remissions given under the Rules could not be regarded as a substitute for a sentence of sentence for life. The Rules framed under the Prisons Act or under the Jail Manual do not effect the total period which the prisoner has to suffer but merely amount to administrative instructions regarding various remissions to be given to the prisoner from time to time in accordance with the rules. The question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate government under Section 342 of the Code of Criminal Procedure, 1973 and neither section 57 of the Penal Code nor any rules or local Acts can stultify the effect of the sentence of life imprisonment given by the Court under Penal Code. The prisoner cannot be released automatically on the expiry of 20 years without any reference to the Government. There has to be a formal order of the Government remitting the remaining part of the sentence of the convict.

(Paras 4 and 5).

*Petition under Article 226 of the Constitution of India praying that :—*

- (a) A writ is the nature of habeas corpus or mandamus be issued commanding the respondents to release the petitioner from the jail custody forthwith;
- (b) Any other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper in the circumstances of the case be issued;
- (c) The petitioner be ordered to be released on bail in the meanwhile.

(d) Filing of certified copy of Annexure P/1 and filing of affidavit in support of the writ be dispensed with as the petitioner is in jail.

B. S. Malik, Advocate with S. V. Rathi, Advocate, for the Petitioner.

D. S. Keer, Advocate, for A.G., Punjab.

### JUDGMENT

K. P. S. Sandhu, J.

(1) Mukhtiar Singh son of Harnam Singh has filed this petition under Article 226 of the Constitution of India praying therein that a writ in the nature of *habeas corpus* or *mandamus* commanding the respondents to release the petitioner forthwith be issued.

2. The facts which gave rise to this petition are as follows. The petitioner along with his co-accused Gurmej Singh was arrested in a case under section 302 of the Indian Penal Code on 11th September, 1966. After trial he was sentenced to imprisonment for life by the Sessions Judge, Jalandhar,—*vide* order dated 11th May, 1967. The case of the petitioner for premature release came up for consideration before the State Government quite a number of times, but the same was rejected since there were adverse police reports against him and he had also committed a number of jail offences. The petitioner admittedly on 23rd August, 1985, had undergone a substantive period of 18 years, 11 months and 10 days inclusive of undertrial period and a period of 26 years, 11 months and 10 days inclusive of remissions. The case of the petitioner for premature release was last considered in the year 1985 and was rejected. On 20th March, 1985, the Superintendent Jail was directed to communicate this fact to the petitioner.

3. The main contention raised by Mr. B. S. Malik, learned counsel for the petitioner, is that in view sub-para (2) of paragraph 647 of the Manual for the Superintendence and Management of Jails in the Punjab (hereinafter referred to as the Jail Manual) after the completion of 20 years inclusive of remissions the petitioner was entitled to an automatic release by the Superintendent Jail and that his case was not to be referred to the Government for release and

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remission of his remaining sentence. Paragraph 647 of the Jail Manual reads as under :—

“647. (1) When a life convict who is either—

- (a) a class I prisoner, or
- (b) a class II or class III prisoner with more than one sentence,
- (c) a prisoner in whose case the Local Government has passed an order forbidding his release without reference,

has earned such remission as would entitle him to release but for the provisions of this paragraph, the Superintendent shall report accordingly to the Local Government in order that his case may be considered with reference to section 401 of the Code of Criminal Procedure, 1898.

- (2) Save as provided by clause (1) when a prisoner has earned such remission as entitles him to release the Superintendent shall release him.”

The classification of prisoners has been given in paragraph 631 of the Jail Manual, which reads as under :—

“631. (1) These rules apply to the whole of British India, inclusive of British Baluchistan, and the Sonthal Parganas.

(2) In these rules—

- (a) “prisoner” includes a person committed to prison in default of furnishing security to keep the peace or be of good behaviour;
- (b) “class I prisoner” means thug, a robber by administration of poisonous drugs or a professional, hereditary or specially dangerous criminal convicted of heinous organised crime, such as dacoity;

(c) "class 2 prisoner" means a dacoit or other person convicted of heinous organised crime, not being a professional, hereditary, or specially dangerous criminal;

(d) "class 3 prisoner" means a prisoner other than a class 1 or class 2 prisoner;

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It has been contended by the learned counsel for the petitioner that it has not been denied by the State that the case is not covered by clauses (a), (b) and (c) of sub-para (1) of paragraph 647 of the Jail Manual. So, the case of the petitioner for premature release was not to be forwarded to the Government, but the Superintendent Jail was to release him after the completion of the aforesaid period without any reference to the Government. To support his point of view he has placed reliance on *Bhagirath v. Delhi Administration* and *Rakesh Kaushik v. Delhi Administration*, (1), where their Lordships have been pleased to hold in the following terms:—

"Under section 432 of the Code of Criminal Procedure the appropriate Government has the power to remit the whole or any part of the punishment to which a person has been sentenced. Under section 433 of the Code, the appropriate Government has the power, *inter alia*, to commute the sentence of imprisonment for life to imprisonment for a term not exceeding fourteen years or to fine. The question of setting off period of detention undergone by an accused as an undertrial prisoner against the sentence of life imprisonment can arise only if an order is passed by the appropriate authority under section 432 or section 433 of the Code. In the absence of such order, passed generally or specially, and apart from the provisions, if any, of the relevant Jail Manual, imprisonment for life would mean, according to the rule in *Gopal Vinayak Godse*, imprisonment for the remainder of life."

4. On the other hand, Mr. D. S. Keer, learned counsel for the Advocate-General, Punjab, has cited *State of Madhya Pradesh v. Ratan Singh and others*, (2), wherein their Lordships have been

(1) A.I.R. 1985 S.C. 1050.

(2) A.I.R. 1976 S.C. 1552.

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pleased to hold that a sentence for life would enure till the lifetime of the accused as it is not possible to fix a particular period of the prisoner's death; so any remissions given under the Rules could not be regarded as a substitute for a sentence of sentence for life. The Rules framed under the Prisons Act or under the Jail Manual do not affect the total period which the prisoner has to suffer but merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time in accordance with the rules. The question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under section 401 of the Code of Criminal Procedure and neither section 57 of the Penal Code nor any rules or local Acts can stultify the effect of the sentence of life imprisonment given by the Court under Penal Code. The prisoner cannot be released automatically on the expiry of 20 years.

5. I am afraid that the petitioner on the basis of *Bhagirath's* case (*supra*) cannot get the relief claimed by him. The precise question before their Lordships in *Bhagirath's* case (*supra*) was as to whether the convict was entitled to set off the period of detention undergone as undertrial prisoner subject to the provision contained in section 433-A and provided that orders have been passed by the appropriate authority under section 432 or section 433 of the Code of Criminal Procedure. So, as per the ratio of *Bhagirath's* case (*supra*) the Government could take into consideration the remissions earned by the convict under the provisions of the Jail Manual for shortening the period of sentence but in no way this means that the convict would have an automatic right to be released after the expiry of twenty years without any reference to the Government. So, the ratio of *Bhagirath's* case (*supra*) in no way overrules the ratio of *Ratan Singh's* case (*supra*) wherein the relevant provisions of the Jail Manual were considered by their Lordships and their Lordships were pleased to hold that in view of the provisions of the Jail Manual the convict did not have the right of automatic release after the expiry of the period mentioned therein. There has to be a formal order of the Government remitting the remaining part of the sentence of the convict. So, in this view of the matter, this petition has to fail and is hereby dismissed.