

Before M. M. Punchhi, J.

JAGTAR SINGH,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Criminal Writ Petition No. 505 of 1986

August 26, 1986.

Constitution of India, 1950—Articles 14 and 161—Code of Criminal Procedure (II of 1974)—Section 433 A—Convict undergoing improvement for life and required to serve at least 14 years actual imprisonment under Section 433A—Mercy Petition filed by the said convict under Article 161 before the Governor seeking premature release—Convict petitioner seeking direction from the Court that the Mercy petition be disposed of by the Governor within a time bound period—Convict also praying that in the event of indecision within the aforesaid period bail should be granted—Court—Whether entitled to issue such directions to the Governor—State conceding three months period in some cases for decision on the mercy petition while denying such concession in other cases—Such denial—Whether discriminatory and violative of Article 14 of the Constitution.

Held. that when the convict seeks mercy its outflow is not to be regulated on the directions of the Court. The very concept of mercy rests on compassion of the mercy giver and there is no such thing as a right to obtain mercy. Besides there is no such thing as compelling the mercy giver to decide and bestow it or not within a time bound period and further that in the event of indecision the convict must get bail. The very idea of letting a convict on bail on the pain of the mercy petition not being decided within a time limit runs counter to the mandatory provisions of Section 433-A of the Code of Criminal Procedure, 1974 which provides that a life convict must actually serve 14 years sentence and an order of bail would be a clear invasion of it. Decision on a mercy petition in the very nature of things is a sensitive matter. No rush and hurry should be generated by the Court. The Court cannot be a guide to the Governor when to decide a mercy petition, but when such a benign power is conferred on the Governor, he is presumed to be conscious of his obligations discharging them with reasonableness and as early as the circumstances may warrant. As such it has to be held that the Court is not entitled to direct the Governor to decide the mercy petition under Article 161 of the Constitution of India, 1950, within a time bound period nor can the Court grant bail on the pain of indecision.

(Para 4)

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Held, that similarity of concessions is not for universal application as the Government takes a decision in each case. The mere fact that the State does not make a concession in a particular case would not make the action of the State as being discriminatory and violative of Article 14 of the Constitution.

(Para 6)

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

- (i) *a writ habeas of corpus holding that further detention of the detenu Narinder Singh s/o Jagtar Singh, r/o Sultanwind Road, H. No. 3, Basant Nagar, PS: B Divn., Near Purani Chungi, Amritsar; life convict confined in Central Jail, Amritsar is not based on sufficient grounds and is illegal, arbitrary and the detenu is entitled to be released forthwith.*
- (ii) *an order/direction be issued quashing the impugned order if the state takes the stand that the case has already been considered and rejected as the impugned order whereby the detenu has been denied premature release is violative of Articles 14, 19 and 21 of the Constitution of India.*
- (iii) *a direction be issued to the State Government holding that detenu is entitled to payment of reasonable wages for the work undertaken from him as has been held in AIR 1983 Kerala 261.*
- (iv) *filing of certified copies of annexures P/1 to P/3 be dispensed with.*
- (v) *during the pendency of the writ petition the detenu be allowed on bail.*
- (vi) *costs of the petition be awarded to the petitioner.*
- (vii) *any other writ, order or direction in the circumstances of this case, this Hon'ble Court deems fit and proper be also passed.*

V. K. Jindal, Advocate and Jatin Salwan, Advocate, for the Petitioner.

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

JUDGMENT

Madan Mohan PUNCHHI, J. (Oral)

(1) The detenu is a life convict. He is one of those to whom section 433-A of the Code of Criminal Procedure is applicable. Thereunder, as mandatorily required, he is not to be released from prison unless he has served at least fourteen years' sentence. Further, undeniably, he has to actually serve fourteen years of sentence. The detenu claims that he has filed a mercy petition for premature release, to the Governor of Punjab under Article 161 of the Constitution on the ground that he was below 20 years of age at the time of commission of the offence. Reliance is placed on the Government instructions dated 12th December, 1985, issued to the Inspector General Prisons, Punjab, Chandigarh,—*vide* memo No. 12/152/83-6J/32987. Under those instructions, mercy petitions submitted to the Governor of Punjab are to be examined by the State Level Committee and recommendations are to be made to the Government on the considerations mentioned therein. Consideration No. 6 is the one invoked here by the detenu. This consideration is to the following effect:—

*After introduction of section 433-A of the Criminal Procedure Code with effect from 18th December, 1978, since every premature release case of a life convict will be taken up after he has completed 14 years' actual sentence in a jail, a minimum period of 5/6 years for juvenile and women prisoners and 7½ and 8½ years for adult male prisoner can be taken as one of the guidelines for release on mercy petition."

The petitioner claims that, since he has spent about 5½ years of actual sentence, he is one of the eligibles for moving a mercy petition for consideration of the Governor under Article 161 of the Constitution.

(2) The State, in its return, has said that the mercy petition of the detenu is under consideration. The learned counsel for the petitioner contends that the Governor should be asked to decide the mercy petition within a specific period. It has been urged so on the strength of orders passed in a few cases of this Court, e.g., Criminal Writ Petitions Nos. 27, 28, 97, 123, 153 and 449 of 1985 and No. 325 of 1985 and a handful of others in which the State undertook to have the mercy petitions of the respective convicts in those decided within

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three months. The State is now not prepared to give any such undertaking for reasons which are not difficult to visualize. But, the convict's counsel insists that direction be issued that the case of the petitioner be decided within three months. Reliance has been placed on a judgment of the Supreme Court in *Sher Singh and others v. State of Punjab*, A.I.R. 1983 S.C. 465 and a couple of decisions of this Court which are being discussed hereafter.

(3) In *Sher Singh's case* (supra), the Supreme Court had before it a writ-petition in which Sher Singh and his two companions were condemned to death after all avenues in courts of law had been exhausted. Since there had been some delay in carrying out the execution of the sentence, they approached the Supreme Court for commutation relying on a judgment of the Court in *T. V. Vatheeswaran v. The State of Tamil Nadu* (1). Though *T. V. Vatheeswaran's case* (supra) was almost upset, their lordships took into account one of the causes of delay in execution of death sentence, being pendency of mercy petitions under Articles 72 and 161 of the Constitution or under sections 432 and 433 of the Code of Criminal Procedure before the Executive authorities. It is in that context that their lordships ruled that long and interminable delays in the disposal of mercy petitions were a serious hurdle in the dispensation of justice and expressed the concern that such delays tend to shake the confidence of the people in the very system of justice. The Court even expressed that a pernicious impression seems to be growing that whatever the Courts may decide, one could always turn to the Executive authorities in order to defeat the verdict of the Court by resorting to delaying tactics. It is in these circumstances that the Supreme Court recommended to the Executive authorities a self-imposed rule that every such petition shall be disposed of within a period of three months from the date on which it is received. These observations of the Supreme Court were made in the context where the verdict of the Court tends to get thwarted, but not in the converse as has been sought to be projected by the learned counsel. It cannot be said on the strength of the aforesaid precedent of the Supreme Court that the Governor must decide a mercy petition always within three months. I find no such dictate of the Supreme Court on the strength of which I can issue a *mandamus* to the Governor to decide the mercy petition of the petitioner.

(1) A.I.R. 1983 S.C. 361.

(4) Pritpal Singh, J., in *Balwinder Singh v. State of Punjab and another*, (2) ordered in somewhat a similar case that if the mercy petition of the convict was not decided within three months from the date of his order, the detenu would be released on bail to the satisfaction of Chief Judicial Magistrate concerned and, if the petition was eventually rejected, the detenu was to surrender to the said judicial magistrate. This decision is termed as a binding precedent to goad me to pass a similar direction. I am afraid I will not be able to do so. In the first instance, the order of Pritpal Singh, Judge, is not a binding precedent, for I can gather no *ratio* from it which, sitting singly, I should normally not depart from. It is a sheer coincidence that on the following day, in *Darshan Singh v. State of Punjab* (3). I had in an almost identical situation said to the contrary. I took the view that when the convict seeks mercy, its outflow was not to be regulated under directions of the Court. The very concept of mercy rests on the compassion of the mercy giver. There is no such thing as a right to obtain mercy. Besides, there is no such thing compelling the mercy-giver to decide whether he will bestow it or not within a time-bound period. And further that if he won't make a decision, then the convict must get bail. The very idea of letting a convict to go on bail on the pain of the mercy petition not being decided within a time limit runs counter to the mandatory provisions of section 433-A of the Code of Criminal Procedure, above-noted. Repetitively, it is observed that a life convict must actually serve 14 years' sentence and an order of bail would be a clear invasion of it. Thus, for this reasoning, I am of the considered view that neither can this Court direct the Governor to decide mercy petitions time bound nor can the Court grant bail on the pain of indecision.

(5) The matter can even statistically and abstractly be viewed. The learned counsel tell me that there are about 8,000 to 9,000 convicts lying in jails in the State of Punjab. Let us suppose that every one of them files a mercy petition and let us further suppose that this Court directs in each case that decision be made within three months. On an estimate, there would be a hundred cases a day before the Governor for decision. Can he gather the necessary material for all within that small period? Can he really apply his mind to each case? It cannot also be forgotten that the Court's verdict would be a hurdle in his way though not an unsurmountable

(2) Cr. W 764/85 decided on 7th August, 1986.

(3) Cr. W. P. 522/86 decided on 8th August, 1986.

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one. There are other considerations which would be kept in mind in view of the Government instructions. These may be general in nature as also individual to the convict. Decision in a mercy petition, in the very nature of things, is a sensitive matter. No rush and hurry should be generated by this Court. This Court can normally be not a guide to the Governor when to decide a mercy petition but, I suppose, when such benign power is conferred on the Governor under Article 161 of the Constitution, he is presumed to be conscious of his obligations discharging them with reasonableness and as early as the circumstances may warrant.

(6) Lastly, it has been contended for the convict that if the State in the instant case does not concede to the three months' period, as has been done in other cases, this would be violative of Article 14 of the Constitution, for no reason has been assigned as to why concession is not being made in the instant case. The argument has to be noticed and rejected in the first breath. Similarity of concessions in other cases is not for universal application. The Government takes decision in each case; so does the judiciary. I can see no reason why the Government should not be free in the instant case to concede or not.

(7) For what has been said above, I find no merit in this petition. Accordingly, it is dismissed.

R.N.R....

Before : D. V. Sehgal, J.

K. N. CHOPRA AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 3969 of 1984

August 26, 1986.

Constitution of India, 1950—Articles 12 and 226—Punjab State Supply and Marketing Co-operative Services (Common Cadre) Rules, 1967—Rule 4.1(e)—Punjab Co-operative Societies Act (XXV of 1961)—Section 26—Markfed—Whether an 'authority' and thus 'State'