

Before P.K. Jain, J.

ROOP SINGH,—*Petitioner.*

versus

STATE OF PUNJAB & OTHERS,—*Respondents*

Criminal Misc. No. 9675—M of 96

29th January, 1997

Code of Criminal Procedure, 1973—Section 433-A—Premature release—Petitioner seeking premature release having undergone more than 10 years 9 months actual sentence and more than 17 years including remission—State Government rejected case for premature release solely for reason that petitioner was found guilty of committing triple murder—Under instructions conviction for more than one murder not a heinous crime—Case of petitioner to be reconsidered.

Held, that the sole question survives for consideration is as to whether the State Government was justified in rejecting the case of the petitioner for his pre-mature release solely for the reason that he was found to be guilty of committing triple murder. A careful perusal of the instructions—Annexures P-2, P-3 and P-5 will go to show that the case of the petitioner falls within the category 'C' i.e. the convicts who have been imprisoned for life for offence for which death is a penalty, but crimes are not considered heinous. It is important to note that what are heinous crimes for the purposes of these instructions are described and detailed therein. A conviction for more than one murder is not included within the ambit of the 'heinous crimes' therein. Once it is held that a convict for more than one murder does not come within the category of a convict of a heinous offence for the purposes of these instructions, the rejection of the case of the petitioner for his pre-mature release on such a ground can be safely said to be for extraneous reason, not recognised by the said instructions issued in exercise of the powers conferred by the Constitution of India.

(Para 9)

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

Rajesh Girdhar, Assistant A.G. Punjab,
for the Respondents.

JUDGMENT

P.K. Jain, J.

(1) Roop Singh, a life convict-undergoing sentence, now confined in Open Air Jail, Nabha, has filed this petition under Article 226/227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') for a direction to the respondents to grant pre-mature release to him in accordance with the instructions issued from time to time by the respondent—State in exercise of its constitutional powers.

(2) The facts necessary for the disposal of this petition are that the petitioner alongwith five others was tried in Sessions case No. 43 of 1985 for having committed murder of 3 persons on 24th June, 1985. He was convicted under section 302/34, Indian Penal Code, and sentenced to undergo imprisonment for life and to pay a fine of Rs. 200 or in default of payment of fine to undergo further rigorous imprisonment for 3 months for each of the three counts by the Additional Sessions Judge by his judgment dated 2nd August, 1986. The substantive sentences of imprisonment were ordered to run concurrently.

(3) It has been alleged in the present petition that as on 25th May, 1996, the petitioner has undergone more than 9 years 10 months of actual sentence and more than 17 years of total sentence including the remissions; that the conduct of the petitioner as an inmate of the jail has always been found to be good and no jail offence was ever committed by him during this entire period; and that the petitioner enjoyed his parole periods also peacefully without any default on his part. It has been alleged that as per instructions dated 12th December, 1985 (Annexure P.2) and the instructions dated 8th July, 1991 (Annexure P.3), the petitioner was required to undergo only 10 years actual sentence and 14 years total sentence including remissions to become eligible for his pre-mature release. It has been further stated that although the petitioner has already completed the sentence in accordance with these instructions, yet his case for pre-mature release has been rejected by the State Government, —*vide* order dated 2nd August, 1995 (Annexure P.5) on the ground that the petitioner has committed triple murder which is extraneous to the grounds mentioned in the said instructions. It has been further stated that the respondent—State had also issued instructions dated 6th March, 1995 (Annexure P.5) whereby a decision was taken to remit the portion of unexpired sentence of

imprisonment of life in cases of those convicts who fulfilled the conditions mentioned in the instructions as on 27th February, 1995, according to which a convict was required to undergo 7½ years actual sentence and 10 years of total sentence with remissions, and in case of those convicts who had undergone actual sentence for one year in Open Air Jail, Nabha, the period of sentence required was 7½ years. It is, thus, stated that the petitioner fulfils the necessary conditions laid down in these instructions (Annexure P.4) also but the case of the petitioner has been rejected without any just and proper reasons.

(4) In their reply, the respondents have stated that the petitioner has no right, whatsoever, to claim pre-mature release, that the petitioner is required to undergo at least 14 years of actual sentence as required under section 433-A of the code before he can claim pre-mature release and that the instructions issued by the State from time to time are for the guidance of the departmental authorities and do not confer any vested right on the petitioner to claim pre-mature release. It has been further stated that as on 15th March, 1995 the petitioner had undergone 9 years 4 months and 29 days actual sentence including under-trial period and the conduct of the petitioner did remain satisfactory. It has been further stated that the petitioner has been convicted for triple murder, and as such is not entitled to pre-mature release under any of the aforesaid instructions issued from time to time. It has also been pointed out that the case of all the persons who have been convicted for more than one murder has been rejected by the Government and there is no violation of Article 14, 19 and 21 of the Constitution of India.

(5) I have heard the learned counsel for the parties and have perused the record.

(6) Shri V.K. Jindal, Advocate, learned counsel for the petitioner, has argued that all the instructions (Annexures P.2, P.3 and P.4) have been issued by the respondent—State in exercise of its powers conferred under Article 161 of the Constitution of India and, therefore, the respondent State is bound to consider the case of the petitioner for his pre-mature release strictly in accordance with these instructions. It has been further argued by the learned counsel that in none of these instructions, a person having been convicted of more than one murder has been termed to be a convict of heinous offence. What is a heinous offence for the purposes of his release has been described therein and no other consideration can be imported while considering as to whether a person has been

convicted of a heinous offence for the purposes of his pre-mature release. In support of this contention, learned counsel has placed reliance upon a decision of this Court in Criminal Misc. No. 16451-M of 1995, *Karnail Singh v. The State of Punjab and others*, decided on July 9, 1996.

(7) On the other hand, Shri Rajesh Girdhar, learned Assistant A.G., Punjab, has argued that the instructions issued by the State Government from time to time are only guidelines for departmental purposes and the same do not confer any right upon a convict to claim premature release. It has been further argued by the learned Assistant A.G. that since the petitioner has been convicted for triple murder, his case does not fall within any of the classes referred to in the instructions and his case has been rightly rejected by the State Level Committee and the Competent Authority. It has also been pointed out by the learned Assistant A.G. that it is the State prerogative to release a convict pre-maturely and the Court cannot issue any direction to the State Government for doing so.

(8) I have given my careful thought to the respective arguments advanced at the Bar. It has not been disputed by the learned Assistant A.G., Punjab, that the respondent State has issued instructions dated 24th June, 1985, 8th July, 1991 and 6th March, 1995 (Annexure P.2, P.3 and P.4) in exercise of its powers conferred by Section 432 of the Code read with Article 161 of the Constitution of India, with a view to remit the portion of the unexpired sentence of life convicts and for their pre-mature release. It has also not been disputed by the learned Assistant A.G. that the petitioner has already undergone more than 10 years 9 months actual sentence and more than 17 years sentence including remissions as on the date of filing this petition. The case of the petitioner was considered by the respondents and was rejected by order dated 23rd August, 1995 (Annexure P.5) on the sole ground that he had committed triple murder and he would become eligible only after completing 14 years of actual sentence. It is also not disputed that the conduct of the petitioner as an inmate has always been found to be good throughout and he did not commit any jail offence during this entire period. It is also not disputed that the petitioner enjoyed the parole periods also peacefully and without any default.

(9) The sole question survives for consideration is as to whether the State Government was justified in rejecting the case of the petitioner for his pre-mature release solely for the reason that

he was found to be guilty, of committing triple murder. A careful perusal of the instructions—Annexures P.2, P.3 and P.5 will go to show that the case of the petitioner falls within the category 'C' i.e. the convicts who have been imprisoned for life for offence for which death is a penalty, but crimes are not considered heinous. It is important to note that what are heinous crimes for the purposes of these instructions are described and detailed therein. A conviction for more than one murder is not included within the ambit of the 'heinous crimes' therein. Once it is held that a convict for more than one murder does not come within the category of a convict of a heinous offence for the purposes of these instructions, the rejection of the case of the petitioner for his pre-mature release on such a ground can be safely said to be for extraneous reason, not recognized by the said instructions issued in exercise of the powers conferred by the Constitution of India.

(10) It may be noted that by the instructions dated 6th March, 1995, the Governor of Punjab, in exercise of his powers conferred by Section 432 of the Code read with Article 161 of the Constitution of India, has been pleased to remit the portion of unexpired sentence of imprisonment of life in the case of those who fulfil the conditions stated therein on 27th February, 1995. The case of the petitioner falls within clause (i) and (iii) which read as under : —

“(i) A male prisoner who was 20 years old and above at the time of commission offence has undergone actual sentence for more than 8½ years and with remission more than 14 years;

xxx xxx xxx xxx xxx

(iii) A prisoner working in the Open Air Jail for not less than one year, has undergone actual sentence for more than 7½ years and with remission more than 10 years.”

Admittedly, the petitioner had undergone actual sentence for more than 8½ years and with remission more than 14 years as on 27th February, 1995, he had throughout maintained good conduct in jail and had not committed any major offence within the past 3 years or been involved in any crime either inside the jail or outside, while on parole or furlough or bail etc. The case of the petitioner admittedly does not fall within the category of the prisoners excepted from the applicability of these instructions. Still further, the petitioner is admittedly lodged in Open Air Jail, Nabha, and has been working therein for more than one year as on 27th February,

1995. He had also undergone actual sentence for more than 7½ years and with remission more than 10 years. In this manner also the petitioner becomes eligible for his pre-mature release. The conditions for pre-mature release contained in the instructions dated 6th March, 1995 (Annexure P-4) are applicable irrespective of the question if a person has been convicted of more than one murder.

(11) The case of the petitioner may be considered in accordance with the conditions of the instructions dated 24th June, 1995, (Annexure P-2) or 8th July, 1991 (Annexure P-3) or 6th March, 1995 (Annexure P-4), but the necessary result is that he becomes eligible for pre-mature release. The rejection of his case solely on the ground that he had committed triple murder is quite foreign to the said instructions. In these circumstances, the order dated 2nd August, 1995 (Annexure P-5) is wholly illegal, arbitrary and violative of Articles 14, 19 and 21 of the Constitution of India.

(12) As a result of the above discussion, this petition is allowed. Order dated 2nd August, 1995 (Annexure P-5) passed by the respondents, is hereby quashed. The respondents are directed to re-consider the case of the petitioner for his pre-mature release in the light of the observations made hereinbefore within a period of one month from the date of the receipt/production of a copy of this order.

J.S.T.

Before N.K. Sodhi, J.

STATE OF PUNJAB & OTHERS,—*Petitioners*

versus

M/S PARMAR CONSTRUCTION CO. & ANOTHER,—
Respondents

C.R. No. 1200 of 96

12th May, 1997

Arbitration Act, 1940—Section 12—Appointment of Arbitrator—Agreement between parties provides for arbitration clause to settle any dispute—Contractor raised dispute and matter referred to arbitration—Arbitrator fixed various dates and recorded evidence—Thereafter on promotion as Chief Engineer failed to continue as Arbitrator—Contractor moved the Court for revoking