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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-399-2014

Date of Decision : Sept. 23rd, 2015

Dilbagh Singh

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present Mr. S.S.Rana, Advocate,
for the petitioner.

Mr. Navdeep Singh, AAG, Punjab,
for the respondent-State.

SHEKHER DHAWAN, J.

Present petition under Article 226 of the Constitution of India is for issuance of directions to the respondents to release the petitioner – Dilbagh Singh pre-maturely on usual terms and conditions as per Government policy dated 8.7.1991 [Annexure P/1] and for quashing of order dated 22.12.2013 [Annexure P/2].

2. Petitioner was convicted for commission of offence inter-alia under Section 302 IPC and Section 25 of the Arms Act and sentenced to undergo Life Imprisonment vide two separate judgments dated 12.09.1999 and 31.10.2003. Criminal Appeal Nos. 396-DB-1999 and 168-DB-2003 filed by him were dismissed by this Court vide judgments dated 19.3.2008 and 23.04.2008 respectively.

3. Learned counsel for the petitioner submitted that the petitioner

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has already undergone more than 17 years of actual sentence and more than 25 years with remissions. Thus, the case of the petitioner is covered as per instructions of the Punjab Government dated 8.7.1991 [Annexure P/1] as he has already undergone more than the actual sentence required under the said policy, but the State Government has not passed order for his release, rather passed order dated 22.12.2013 [Annexure P/2] which is liable to be set-aside as the policy at the time of his conviction is to be considered.

4. Learned State Counsel submitted that the petitioner had committed double murder and as such his case was rejected vide order dated 22.12.2013 [Annexure P/2]. The earlier policy dated 8.7.1991 regarding pre-mature release was revised and a new policy was issued by the State Government dated 4.4.2013 [Annexure R/1]. Hence, the present petition be dismissed.

5. Having considered the submissions made by learned counsel for the parties and taking the case from the admitted facts that the petitioner who was convicted and sentenced for commission of offence under Sections 302, 323 and 34 IPC and Sections 25 and 27 of Arms Act and was ordered to undergo Life Imprisonment vide judgment dated 31.10.2003 passed by learned Additional Sessions Judge, Amritsar, the policy of Punjab Government relating to pre-mature release of life convicts was dated 8.7.1991 and thereafter the State Government revised the said policy on 4.4.2013. The case of the petitioner was rejected vide order dated 22.12.2013 [Annexure P/2] primarily on the ground that the petitioner was involved in double murder.

6. Similar matter had gone before Hon`ble Supreme Court of India

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in **State of Haryana and Ors. Vs. Jagdish, 2010 [3] J.T. 341** and the Apex Court observed that the policy that was existing on the date of conviction is to be taken into consideration while deciding the case of a convict. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, it should relate to the policy, which is favourable to the convict while deciding the case of a 'lifer' for pre-mature release and he should be given benefit thereof. That way, the policy dated 4.4.2013 referred by learned State Counsel is not relevant for the decision of present case.

7. As per policy dated 8.7.1991 [Annexure P/1], Heinous Crimes with reference to category 'B' of 1[1] are defined as follows :-

- (i) Offence under section 302 along with 347 of the IPC i.e. murder with wrongful confinement for extortion.
- (ii) Section 302 with 375 i.e. murder with rape
- (iii) Offence under Section of IPC i.e. dacoity with murder
- (iv) Offence under Section 302 along with offences under the Terrorists and Disruptive Activities (Prevention) Act, 1987
- (v) Offence under Section 302 along with offence under the Untouchability (offences) Act, 1955.
- (vi) Offences under Section 302 where murder has been committed in connection with any dispute over dowry and this is indicated in the judgment of the trial Court.
- (vii) Offence under Section 302 where the victim is a child under the age of 14 years.
- (viii) Any conviction under Section 120-B of the IPC."

A perusal of offences defined as heinous crimes would reveal that the case of the present petitioner does not fall in heinous crimes. As the case of the petitioner does not fall in the category of 'heinous crime',

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the impugned order is contrary to the policy decision taken by the State Government, therefore, cannot legally sustain.

8. In view of the above, the present petition is accepted and the impugned order, dated 22.12.2013 [Annexure P/2] is set-aside and the matter is remitted back to the Principal Secretary, Home Affairs and Justice, Punjab for passing a fresh order taking into consideration policy dated 8.7.1991 [Annexure P/1] and in the light of observations made above, within a period of two months from receipt of copy of this order, failing which the petitioner will be released to the satisfaction of District Magistrate, Amritsar on usual terms and conditions.

9. The writ petition is allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

Sept. 23rd, 2015
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