

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Writ Petition No. 461 of 2015
Date of decision : August 24, 2015

Gobind

....Petitioner

versus

State of Haryana and others

....Respondents

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. H.N.Khush, Advocate, for the petitioner
Mr. Munish Sharma, AAG, Haryana

Fateh Deep Singh, J.

The present petitioner Gobind was tried in a case FIR No. 17 dated 5.1.2011 under sections 302/307 IPC read with sections 25/27/30 of the Arms Act pertaining to Police Station City Hisar and was found guilty and convicted through judgment passed by learned Additional Sessions Judge, Hisar dated 21.5.2013 whereby he was sentenced to undergo beside other sentences life imprisonment.

The petitioner has invoked the jurisdiction of this Court in terms of Article 226 of the Constitution of India seeking issuance of writ of

mandamus directing the respondents to provide B-Class facilities to him while undergoing sentences in Central Jail No. 1 at Hisar. The precise ground of such prayer is that he was having superior mode of living with sufficient social work and other allied status including being Ex-District President of Bahujan Samaj Party.

On notice, State filed reply by way of short affidavit of Superintendent Jail, Central Jail-I, Hisar wherein all these averments were duly admitted but the relief was opposed on the ground that the Government of Haryana vide memo No. 36/19/2013-IJJ(II) dated 1.8.2013, Annexure R/1 had categorized any person having committed offence in para no. 3(xii) for which B-class facility could not be provided.

Heard Mr. H.N.Khush, Advocate, for the petitioner and Mr. Munish Sharma, AAG, Haryana and perused the record.

The two sides have rightly accepted that as on date, old Punjab Jail Manual governs the procedure of the Jails in the State of Haryana. Para 576-A of the punjab Jail Manual divides the convicted persons into three classes namely class 'A' which contains persons who are -

- (a) non-habitual prisoners of good character,
- (b) by social status, education and habit of life been accustomed to a superior mode of living, and
- (c) have not been convicted of -
 - (i) offences involving elements of cruelty, moral degradation or personal greed;

- (ii)serious or premeditated violence;
- (iii)serious offences against property;
- (iv)offences relating to the possession of explosives, firearms and other dangerous weapons with the object of committing an offence or of enabling an offence to be committed;
- (v)abetment or incitement of offences falling within these sub-clauses;

Class-B which contains prisoners who by social status, education or habit of the life have been accustomed to a superior mode of living. Habitual prisoners may be included in this class by order of the Inspector General of Prisons and Class-C which contains persons who are not classified in classes A and B.

Though Mr. Munish Sharma accepts the fact that Clause (a) of these provisions do not bar murder convict from being granted class-B facility who has sought to rely on notification issued by the State Annexure R/1 which categorizes the persons who are not entitled to such a facility and to the query of the Court admits that these are only administrative/executive instructions and cannot replace the statutory rules as laid down in the Jail Manual and therefore, administrative/executive instructions are subservient to the statutory rules. It needs to be kept in mind that all policy matters are to be applied prospectively and not retrospectively and which ensures that

equally placed persons are treated equally. Keeping in view that as on the date of conviction the qualification of the petitioner falls under these provisions and entitles him to class-B facilities and which admittedly was earlier granted to him. The instant petition as such stands allowed. The Authority concerned shall consider case of the petitioner in the light of the same and do the needful within one month from the receipt of certified copy of this order.

August 24, 2015

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**(Fateh Deep Singh)
Judge**