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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-642-2015
Date of Decision : Sept. 17th, 2015

Vijay

.... Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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

Present Mr. Vijay K. Jindal, Advocate,
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana
for the respondent-State.

SHEKHER DHAWAN, J.

Petitioner – Vijay has filed the present writ petition under Article 226 of the Constitution of India for quashing of impugned order dated 20.3.2015 [Annexure P/10] whereby his prayer for grant of pre-mature release was declined.

2. Petitioner – Vijay was tried along with Purshotam for commission of offences punishable under Sections 302, 328 and 379 IPC in case FIR No.0171 of 29.4.1995 registered at Police Station – GRP, Faridabad, on the allegations that he had poisoned deceased – Kamal Singh by administering Aldrin to him in a cold drink bottle at Platform No.3, Railway Station, Faridabad and accompanied him on the Punjab Mail with the sole

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motive of depriving him of the cash, as well as, the luggage in his possession. Petitioner was convicted and sentenced for commission of offence under Section 302 and 379 IPC on 17.3.1998. Appeal preferred by the petitioner was dismissed by this Court on 25.1.2008.

3. Petitioner has taken the plea that he has already undergone the following sentence [as mentioned in the reply dated 1.7.2015 filed by the respondents]:

“Details of sentence undergone by the petitioner as on 18.2.2015.

Sr.No.	Period	Years	Months	Days
1	Undertrial period from 03.05.1995 to 31.08.1995	00	03	29
2	Conviction period from 17.03.98 to 10.3.2003 and from 23.04.08 to 18.2.2015	16	11	01
	Total	17	03	00
	Bail Period [-]	05	01	13
	Actual sentence undergone =	12	01	17
3	Remissions Earned (+)	04	02	05
	Total	16	03	22
4	Parole availed/Bail Period [-]	00	07	14
	Total Sentence	15	08	08

4. Petitioner has not committed any jail offence nor he over stayed parole. The petitioner was convicted vide judgment dated 17.3.1998 [Annexure P/1], and his case for pre-mature release was to be considered as per policy dated 4.2.1993 Annexure P/4] and modified policy dated 17.7.1997 [Annexure P/5]. After completion of 10 years of actual imprisonment and 14 years sentence including remissions, the petitioner having become entitled for grant of pre-mature release as per judgment of Hon`ble Supreme Court in Maru Ram Vs. Union of India (1981) 1 SCC 107. His case was considered favourably by Superintendent, District Jail, Faridabad and the matter was forwarded for his pre-mature release. The

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State Level Committee considered the matter but the petitioner was not recommended for pre-mature release by the Committee. Petitioner approached this Court by way of writ petition bearing CRWP No. 514 of 2014 and directions were issued to the State Government to re-consider the matter. The State Government passed fresh order dated 5.3.2014/29.4.2014 [Annexure P/8]. The petitioner filed another writ petition being CRWP No.1156 of 2014 challenging the validity of order Annexure P/8 and the writ petition was accepted with a direction to the competent authority to pass fresh order in accordance with law, preferably within a period of six weeks.

5. On 20.3.2015, State of Haryana again passed the order [Annexure P/10] holding that the petitioner is not eligible for pre-mature release at this stage.

6. Learned counsel for the petitioner contended that the impugned order, dated 20.3.2015, Annexure P/10, is illegal, arbitrary and whimsical and is liable to be quashed. The petitioner deserves release after completion of 10 years of actual imprisonment and 14 years imprisonment including remissions as per policy of the State as his case does not fall under para 2[a], rather his case falls under para 2[b] of the policy dated 4.2.1993 [Annexure P/4]. State Government has wrongly rejected the case of the petitioner taking the plea that the petitioner is a life convict and belongs to 'Poisoning Gang' [Zaharkhurani] which endangers public safety. The case of the petitioner is not covered under sub-para 2[a] of the policy, Annexure P/4 and the competent authority travelled beyond its jurisdiction. So, the impugned order dated 20.3.2015 be quashed and the petitioner be released from custody.

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7. Learned State Counsel took the plea that as per directions of this Court, the State Government has already re-considered the matter. As the case of the petitioner relates to 'Poisoning Gang' [Zaharkhurani] which endangers public safety, the State Government did not consider it fit to release the petitioner pre-maturely as he had not undergone 14 years of actual sentence and 20 years of sentence including remissions, as per policy of the State Government. So, the writ petition be dismissed.

8. Having considered the submissions made by learned counsel for the parties and the fact that the petitioner was convicted and sentenced for committing murder by administering poisonous substance in the cold drink bottle of Kamal Singh [since deceased] and accompanied him with the sole motive of depriving him of the cash as well as the luggage in his possession. Needless to mention that every murder is a brutality and murder itself is a heinous crime. Once, the State Government itself has classified murder in different ways, it is bound by its instructions and the same must be followed. Paragraph 2[a] which deals with the situation where where the murder is motivated by lust, greed or avarice, that are the cases of human instincts or where it has been exceptionally brutal in its execution. A reading of the impugned order, Annexure P/10, would indicate that incident took place with the object to take away cash and luggage of Kamal Singh and as such, the case of the petitioner falls under para 2[b] of the policy. There is absolutely no category defined in the policies, Annexure P/4 and P/5 issued by the State Government specifically indicating 'member of Poisoning Gang' [Zaharkhurani]. There is no such finding by the trial Court at any stage that the petitioner was a member of 'Poisoning Gang' [Zaharkhurani]. No such finding has been recorded by

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the Division Bench of this Court while deciding the appeal of the present petitioner.

9. Hence, I am of the view that the reasons recorded by the State Level Committee are not based upon proper appreciation of the instructions and policy of the State Government, Annexure P/4. Resultantly, the impugned order, dated 20.03.2015, Annexure P/10 is quashed and direction is issued to the respondents to re-consider the case of the petitioner 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, Faridabad on usual terms and conditions.

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

(SHEKHER DHAWAN)
JUDGE

Sept. 17th, 2015
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