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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-718-2015

Date of Decision : Sept. 23rd, 2015

Sukhwinder Singh @ Binder

.... 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? Yes
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? Yes

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

Mr. Varun Sharma, 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 – Sukhwinder Singh @ Binder pre-maturely on usual terms and conditions as per Government policy dated 8.7.1991 [Annexure P/1].

2. Petitioner was tried and convicted for commission of offence under Section 302 IPC and sentenced to undergo Life Imprisonment vide judgment dated 28.10.2004. Criminal Appeal No.99-DB-2005 filed by him was dismissed by this Court on 22.10.2008.

3. Learned counsel for the petitioner submitted that the petitioner has already undergone more than 14 years of actual sentence and more than 22 years with remissions. Conduct of the petitioner remained satisfactory inside the jail and while on parole. As per policy of the

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Government dated 8.7.1991 [Annexure P/1] regarding pre-mature release of life convicts while exercising powers conferred under Sections 432, 433 and 433[A] of Code of Criminal Procedure and Article 161 of the Constitution of India, a life convict who commits 'heinous crime' will be considered for pre-mature release after undergoing 12 years of actual sentence and 18 years with remissions. Further, as per instructions dated 23.10.2001 [Annexure P/2, a convict who opts to undergo sentence in open Air Jail, Nabha would be given the benefit of remission of one year and he will be released from jail one year earlier. Hence, the case of the petitioner is covered for pre-mature release as he fulfills the conditions of the policy as he was required to undergo actual sentence of 11 years and 17 years with remission and since the petitioner has already undergone more than that, his further detention in jail is illegal. The case of the petitioner was recommended for his pre-mature release and when his case was not considered, he approached this Court by filing CRM-M-6678-2013, which was disposed of with the direction to consider the case of the petitioner as per law. However, the respondents considered and rejected his case on the ground that he had committed heinous crime as he had killed a woman and prior to that, he had committed rape upon her forcibly. The respondents have already released a number of convicts as per the policy, Annexure P/1 and P/2 whose cases were also identical to that of the present petitioner. The real controversy is which instructions of the State Government were applicable to the present petitioner. Hon`ble Supreme Court of India 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

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of a convict. Otherwise also, the petitioner does not fall in the category of 'heinous crime'. Case of the present petitioner is squarely covered as per law laid down in **Jagdish's case [supra]**. Learned counsel prayed that directions be issued to the respondent-State to release the petitioner forthwith on usual terms and conditions.

4. Learned counsel for the respondent-State submitted that as per orders passed by this Court, the case of the petitioner was re-considered by the State of Punjab and fresh speaking order dated 8.1.2014 [Annexure P/3] was passed by the Principal Secretary, Home Affairs and Justice, Punjab rejecting the case of the petitioner, primarily on the ground that he was involved in commission of offence of rape and sexual offences as he wanted to commit crime on regular basis and as his desire was not fulfilled, he committed the murder. Learned State counsel also took the stand that the policy notified on 4.4.2013 stipulated that persons responsible for sexual offences against women are not to be given any benefit of pre-mature release.

5. Having considered the submissions made by learned counsel for the parties, this Court is of the considered view that in this case, the judgment of conviction and order of sentence was passed on 28.10.2014 in case bearing FIR No. 675 dated 13.12.2002. As per policy of the State Government, dated 8.7.1991 [Annexure P/1] the petitioner has already undergone the required period of actual sentence and period required alongwith remissions. His case is thus, squarely covered as per the said policy, Annexure P/1. As such, the petitioner is entitled to be released pre-maturely on completion of required sentence, which he has already undergone.

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6. Similar matter had gone before Hon`ble Supreme Court of India in **Jagdish's case [supra]** 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. The reasons assigned by the Principal Secretary, Home Affairs and Justice, Punjab while rejecting the case of the petitioner are not in consonance with the policy of the State Government itself.

7. In view of the above, the present petition is accepted and the impugned order, dated 8.1.2004 [Annexure P/3] 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, Patiala on usual terms and conditions.

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

(SHEKHER DHAWAN)
JUDGE

Sept. 23rd, 2015
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