

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRWP No. 1055 of 2016

Date of decision:- December 23, 2016

SURENDER

....PETITIONER..

VS.

STATE OF HARYANA AND OTHERS

....RESPONDENTS..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

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

Mr. Tanuj Sharma, AAG, Haryana.

JASPAL SINGH, J. (Oral)

By virtue of instant petition preferred under Article 226/227 of the Constitution of India, the petitioner has sought issuance of a Writ in the nature of Habeas Corpus for quashing of impugned order dated 27.06.2016 (Annexure P-6) and further observing that petitioner is entitled to be released prematurely on terms and conditions under Article 161 of the Constitution as per the policy framed by State Government as well as that further detention of the petitioner has become violative of Articles 14, 19 and 21 of the Constitution.

2. Undisputably, the petitioner as well as his co-accused Mange Ram son of Balbir Singh were convicted under Section 302 IPC in case bearing FIR No.249, dated 29.09.1991, under Sections 302/323 read with Sections 149 and 148 IPC, Police Station Japusane, District Rewari and sentenced to undergo life imprisonment.

3. In judgment dated October 01, 2008 passed by a Division Bench of this Court in CRA-216-DB-1999 & CRA-225-DB-1999, it was categorically observed that *“we are also unable to determine if the deceased had himself walked to the tubewell of the accused or whether he had been dragged, pushed or shoved from one place to other. The story of dragging is lacking corroboration and becomes hard to accept. Therefore, if Umed Singh received most of the injuries at the tubewell of the accused, the prosecution version certainly gets watered down, and the defence version gains acceptability. However, we are not convinced that the complainant party was the aggressor”*

4. Subsequently, the petitioner and his co-accused preferred an appeal challenging the judgement passed by the Division Bench of this Court by way of Criminal Appeal No. 1071/2009 and the Hon'ble Apex Court made the observation that *“it has been emphasized that the prosecution story that Umed Singh had been dragged from his field to the tubewell of Balbir Singh had no basis in the evidence as there were no drag marks on the body or on the ground indicating that the body had indeed been dragged from one place to the other. It bears reiteration that as per the prosecution story the incident had happened in the field of Umed Singh where after he had been shifted to the tubewell of Balbir Singh and subsequently taken to the Primary Health Centre. It is significant that the site plan Ex.PW prepared by the police officer corresponds entirely with the site plan Ex. PG prepared by the Patwari. The two site plans indicate that when Umed Singh was dragged or lifted from Mark A to Mark D, several items which had been on his person had fallen en route and this is borne*

out by the recoveries noted above. To our mind, the plans which were prepared almost contemporaneously to the incident, prove the case of the prosecution with regard to the site of the incident beyond any doubt. The observation of the High Court, therefore, that there appeared to be some confusion about the place of incident is completely misplaced. In that eventuality, also the possibility that a large number of persons had been involved in the incident, cannot be ruled out, as it would not have been possible for a few persons to have carried Umed Singh to a distance 294 karams from point A to D. It must, therefore, be held that the circumstances indicate that all the appellants were in fact participants in the murder.”

5. On the strength of the observations made by the Division Bench of this Court as well as that of Hon'ble Apex Court in judgements dated 01.10.2008 and 16.12.2010, it has been contended by learned counsel for the petitioner that if, at all, dragging is not of the dead body of Umed Singh, rather at most it can be said that Umed Singh was lifted from the place of occurrence to the tubewell from where he was subsequently, shifted to the hospital. It was after about 5 hours Umed Singh took his last breath. Thus, the case is not covered by para 2(a) of Policy dated 04.02.1993 (Annexure P-5) regarding premature release of the life convict. Rather, the case of the petitioner stands fully covered by para 2(b) of the aforesaid Policy.

6. The next contention of learned counsel for the petitioner is that the co-accused of the petitioner namely Mange Ram son of Balbir Singh has already been granted the concession vide order dated 04.04.2016 (Annexure P-7), who is similarly situated by applying para 2(b) of the above

referred Policy by the concerned authorities . On the basis of similar set of allegations and observations while, the co-accused of the petitioner namely Mange Ram has been granted the concession but the petitioner has been declined the same, which is otherwise violative of the principle of natural justice as well as doctrine of equality.

7. At this juncture, learned State counsel Mr. Tanuj Sharma, AAG, Haryana has submitted that the order dated 04.04.2016 (Annexure P-7) whereby the concession has been granted to the co-accused Mange Ram is under consideration and the proceedings are pending for re-calling the same.

8. Even otherwise, this Court is of the considered view that in the facts and circumstances of the case which have been narrated above, para 2 (b) of the Policy dated 04.02.1993 shall be applicable and not para 2(a) of it, especially, in the circumstances that no dragging of the dead body of Umed Singh is established on record either before the Division Bench of this Court or before the Hon'ble Apex Court. Moreover, provisions contained in policy dated 04.02.1993 are still in operation even after the issuance of fresh policies dated 17.07.1997 (Annexure P-5A) as well as 16.03.1999 (Annexure P-5B). Though, some other additions have been made by the State of Haryana.

9. In the light of what has been discussed above, impugned order dated 13.06.2016 forwarded vide Endst. No. 36/243/2016-1JJ-II dated 27.06.2016 (Annexure P-6) is not sustainable in the eyes of law and is set aside. State of Haryana as well as its other competent authorities are directed to reconsider the matter in the light of para 2(b) of above referred

policies.

10. It is expected that the concerned authorities would take up the matter expeditiously and finalize the matter as early as possible. However, it should not exceed a period of 3 months from the date of receipt of certified copy of this order.

December 23, 2016
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes