

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Writ Petition No. 704 of 2015

Date of decision : 29.01.2016

Rajiv Singla

..... Petitioner

versus

Union Territory Administration and another

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporters or not? Yes

3. Whether the judgment should be reported in the digest?

Present: Mr. Vijay Kumar Jindal, Advocate for the petitioner

Mr. Gautam Kaile, Advocate for

Mr. Rajiv Sharma, Advocate for U.T. Chandigarh

ANITA CHAUDHRY, J.

The petitioner has preferred this petition under Article 226/227 of the Constitution of India for direction to grant remissions allowed by the Chandigarh Administration vide Circulars Annexure P-6 and P-7, even though he was on parole.

The petitioner was sentenced to undergo rigorous imprisonment for 8 years under Section 304-B IPC besides other punishments. The conviction was upheld but the sentence was reduced to 7 years under Section 304-B IPC vide judgment dated 12.12.2013 by a Coordinate Bench of this Court. The petitioner preferred SLP and was granted four weeks time to surrender. The petitioner surrendered. His SLP was later dismissed.

The case of the petitioner is that as per custody certificate dated 29.04.2015, he had undergone 5 years, 1 month and 25 days of custody including remissions. He was granted parole four times of 28 days each.

The petitioner claims that he was on bail when his appeal was under

consideration of the High Court and the Union Territory Administration granted special remissions on the occasion of New Year in January 2007 and the convicts undergoing sentence of 7 years were held entitled to 8 months remissions. An identical circular was issued the next year on 02.02.2008 and the petitioner became entitled to remission of 8 months. The petitioner claims that he fulfilled the criteria and was not covered under any of the exceptions of the circular and was entitled to the benefit of both the remissions even though he was on bail. It was pleaded that he was not required to be actually or physically in jail on the date the circular were issued and he was entitled to remissions of 10 months and thereby he had completed the sentence. Reliance was placed upon ***D. Ethiraj vs. Secretary to Government, 2011(5) RAJ 603.***

Notice was given to the respondents who filed their reply pleading that the petitioner had only completed 5 years, 7 months and 29 days of custody as on 26.09.2015. It was admitted that special remissions were granted by the Administrator U.T. Chandigarh on New year i.e. 1st January 2007 and on Republic Day 2008. It was pleaded that the petitioner remained on bail from 07.10.2003 to 11.08.2014. Thereafter, the Hon'ble Apex Court had directed the petitioner to surrender. It was pleaded that at the time of grant of remission the petitioner was not in jail and benefit of remission could not be extended to him.

I have heard both the sides at great length.

Learned counsel appearing for the petitioner while placing reliance upon ***Sultan Singh vs. State of Haryana, 1999(1) RCR(Criminal) 335, Joginder Singh vs. State of Punjab and others, (2001) 8 SCC 306, Sudhir Kumar vs. State of Punjab and another, (Crl. Writ Petition No. 1169 of 2013) decided on 21.11.2013 and Wazir Singh vs. State of Haryana and another, (Crl. Writ Petition No. 3 of 2012) decided on***

26.09.2012 had urged that the circulars nowhere mention that to get the benefit of remission the convict must actually be in jail on the date when it was issued. It was urged that the petitioner was allowed bail and it was just a fortuitous circumstance which will not deprive him of the benefit. The counsel had extensively referred to **D. Ethiraj's** judgment.

The question involved here is that whether the petitioner is entitled to remission in the sentence for the period when he was on bail. The petitioner had been convicted and sentenced to 8 years imprisonment which was subsequently reduced to 7 years in appeal. The petitioner remained in custody from 15.9.1999 to 20.8.2003 during trial and as a convict from 21.8.2002 to 7.10.2003 before he was allowed bail. He remained in jail from 11.8.2014 to 26.09.2015 and is presently in custody. The petitioner had availed 5 paroles of 28 days each. The custody certificate (Annexure P-1) also gives the total remissions earned by him which is 5 months and 20 days as on 26.9.2015.

The circulars Annexures P-6 and P-7 are similar. It prescribes limitations both as regards the prisoners who are eligible and those who have been excluded. The conditions for remission of sentence to the prisoners who are eligible are also prescribed by the circular. It also states that special remissions shall not apply to the prisoners convicted of a particular offence. In **State of Haryana and others vs. Mohinder Singh, AIR 2000 SC 890** the Apex Court while dealing with the similar issue had drawn out a distinction between bail and parole observing that both had different connotations in para 18 of the judgment reads :-

"18. When a circular specifically applies to the prisoners who are undergoing sentence and are confined in jail and even to those who are on parole or furlough we cannot extend this circular to convicts who are on bail and thus carve out another

category to which Court is not entitled under Section 432 of the Code. As noted above, validity of the circular has not been challenged on any other ground.”

In ***State of Haryana vs. Nauratta Singh and others, (2000) 3 SCC 514***, the State of Haryana approached the Apex Court as the convict was held entitled to remission as he was on bail. The claim had been upheld by the Single Judge of this Court. The State of Haryana could not reconcile with the decision and preferred an appeal. Two judgments reported as ***Man Mohan Sahani vs. State of Haryana, 1987(2) RCR 292*** and ***Amrik Singh vs. State of Haryana, 1992(2) RCR 138*** were referred and it was held that wrong decision had been taken so far as the question relating to entitlement of remission was concerned. It was held that the instructions issued by the Government of Haryana under which the respondent claimed remission could not be interpreted as to enable him to count the period during which he was on bail towards remission. While referring to the decision reported in ***Mohinder Singh's case (supra)*** it had observed :-

20. From para 637 as reproduced above a convict on bail is not entitled to the benefit of remission system. In fact question is no longer res integra as it is covered by the decision of this Court in Jai Prakash and others vs. State of Haryana and others (1987 (4) SCC 296). While considering the scope of para 637 this Court held:

"On a reading of the aforesaid provision it is manifest that a prisoner who has been released on bail or whose sentence has been temporarily suspended and has afterwards been re-admitted in jail will be brought under remission system on the first day of the calendar month next following his re-

admission. In other words, a prisoner is not eligible for remission of sentence during the period he is on bail or his sentence is temporarily suspended. The submission that the petitioners who were temporarily released on bail are entitled to get the remission earned during the period they were on bail, is not at all sustainable."

21. *In the appeals where the convicts were on bail High Court in the impugned judgments relied on a decision of this Court in Nalamolu Appala Swamy and others vs. State of Andhra Pradesh (1989 Supp. (2) SCC 192) where this Court observed as under: -*

"We find merit in the contention because the scheme of remission formulated under the GO is with reference to the period of sentence actually undergone by different classes of prisoners and in the case of some the period of actual sentence together with the remissions earned for reckoning the total sentence. The GO does not stipulate that in order to get the benefit of remission the prisoners must actually be in jail on the date the GO was issued."

22. *Decision of this Court in the case of Nalamolu Appala Swamy aforesaid, however turns on the facts of that case. The GO which granted remission has not been set out in the judgment though the judgment noticed that GO has been issued by the Government for granting remission to certain categories of prisoners "to commemorate the occasion of the anniversary of formation of the Andhra Pradesh State on November 1, 1984 and the restoration of democratic rule in the State". The Court also noticed the argument of the appellants*

that GO nowhere sets out that benefit of remission would be confined to prisoners who were actually in jail on the date of the GO and not to others who were on bail.

23. We are of the opinion that the High Court was not right in the judgments impugned in these appeals holding that the respondents were entitled to remission of their sentences under the circulars in question issued under Section 432 of the Code of Criminal Procedure. These appeals are, therefore, allowed and the impugned judgments of the High Court are set aside.”

The Apex Court in ***State of Haryana vs. Nauratta Singh and others, (2000) 3 SCC 514*** in order to highlight the fallacy in the approach of the Court had demonstrated through an illustration and it would be useful to quote para 18 and 19 which reads as under:-

“18. The clear fallacy of the approach made by the High Court can be demonstrated through an illustration. An accused was tried for an offence under Section 326 of IPC. During trial period he was allowed to remain on bail and the trial prolonged up to, say 3 years. Finally the court convicted him and sentenced him to imprisonment for three years. Should not the convicted person go to jail at all on the premise that he was on bail for three years and is hence entitled to remission of that period?

19. Yet another illustration can be shown by stretching the above illustration a little farther. If the aforesaid convicted person filed an appeal and got his sentence suspended by the appellate court and the appellate court confirmed the conviction and sentence after a period of 3 years, is he entitled

to claim that he need not go to jail at all as he was on bail for more than 3 years during the post conviction stage also? If it is to be held that he is entitled to such remission, we are afraid, criminal justice system would be reduced to a mockery. The absurdity of the claim of the respondent can thus be demonstrated."

The petitioner had extensively referred to the concluding paragraphs of **D. Ethiraj's case (supra)** but missing the paragraphs which notices with approval decision rendered by the Apex Court in **State of Haryana vs. Nauratta Singh**. Paras 16 to 19 reads as under:-

16. The Court found that an accused cannot claim the period during which he was on bail towards his remission. We are in respectful agreement with that interpretation by this Court in Nauratta Singh. Any other interpretation will render criminal justice system to a mockery. This Court clarified the same by giving illustration in para 18 of the report in Nauratta Singh, which we set out here:

"18. The clear fallacy of the approach made by the High Court can be demonstrated through an illustration. An accused was tried for an offence under Section 326 IPC. During trial period he was allowed to remain on bail and the trial prolonged up to, say, 3 years. Finally the court convicted him and sentenced him to imprisonment for three years. Should not the convicted person go to jail at all on the premise that he was on bail for three years and is hence entitled to remission of that period?"

17. Similar views have been expressed by this Court in the

subsequent decision of Joginder Singh Vs. State of Punjab & Ors. (2001) 8 SCC 306. In Joginder Singh, the aforesaid para of Nauratta has been quoted.

18. We are in entire agreement with the aforesaid views taken by this Court that if it is clear from the facts of a given case that during the period the petitioner was on bail and had not at all suffered any imprisonment, he cannot get the benefit of remission in respect of that period.

19. The same is admittedly not the position in this case. Here, the appellant had suffered substantial portion of the period in jail which is more than 17 months. On this, there is no dispute. In that view of the matter, the appellant's case is covered by the ratio of the three Judge Bench decision of this Court in Nalamolu Appala Swamy (supra)."

In the opening paragraphs the period of custody undergone by the accused was noted and finally though not approving the reasoning given by the High Court it only observed that the Court has to consider the actual period of sentence undergone by the prisoner and whether by reason of period actually undergone, the prisoner qualifies for remission and for that reason the judgment was set aside and directions were given to the appellant to make a fresh representation for remission. Nothing more can be read into it.

In view of the settled position of law, I find no merit in the contentions raised by the petitioner.

The petition is dismissed.

January 29, 2016

**(ANITA CHAUDHRY)
JUDGE**