

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

**CRWP No.172 of 2016 (O&M)
Date of Decision : 12.07.2016**

Om Parkash

..... Petitioner

versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. A.K.Gupta, Advocate
for the petitioner.

Mr. Amrik Narwal, DAG Haryana.

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

AJAY TEWARI, J. (Oral)

This petition has been filed praying that the petitioner is entitled to be considered for premature release as per paragraph 2(b) of the premature policy.

The brief facts are that the petitioner was convicted under Section 302 IPC read with Section 149 IPC for the death of Prabhu Dayal. The allegations in the FIR were that while the other convicts delaboured the deceased the petitioner ran over him with a tractor.

Learned DAG states that the present case is one of extreme brutality and would not be covered by paragraph 2 (a) of the policy (Annexure P-4). However, this is disputed by the learned counsel for the

petitioner who has argued that the case of the petitioner was that since there are no crush injury, he has been falsely implicated and the trial Court had held that even though there may not have been any crush injury yet it was proved that atleast the petitioner had hit the deceased with the tractor and therefore held him guilty.

Learned counsel for the petitioner has argued that in the phase of this finding that the State has erred in considering the case of the petitioner under paragraph (a) by presuming that the petitioner had acted with extreme brutality.

In my opinion the argument of learned counsel for the petitioner carries more weight. Once the trial Court itself found that there were no crush injury and therefore came to the conclusion that in all probability the petitioner had hit the deceased with the tractor then it can not be said to be a case of extreme brutality. The exact phrase used in para 2 (a) of Annexure P-4 is 'murder exhibiting brutality such as cutting the body into pieces or burning/dragging the body'.

In my opinion the judgment of the trial Court does not indicate that the petitioner had run over the deceased but only indicates that in all probability the petitioner had hit his tractor into the deceased.

Consequently, the impugned order is set aside and the respondents are directed to re-consider the claim of the petitioner for pre-mature release as per para 2(b) of the circular (Annexure P-4). Necessary exercise be completed within two months.

Learned counsel for the petitioner has further argued that the petitioner having completed 15 ½ years of actual sentence, he should be released on interim bail.

Learned DAG has not been able to deny the fact that the petitioner has been in custody for the 15 ½ years.

In the circumstances, petitioner is directed to be released on interim bail to the satisfaction of the CJM Hisar till such time the application is decided.

Since the main case has been decided, the pending criminal miscellaneous application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

July 12, 2016
pooja sharma-I