

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

**Criminal Writ Petition No.1541 of 2016 (O&M)
Date of Decision: August 21, 2017**

Krishan

.....PETITIONER(s).

VERSUS

State of Haryana

....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. V.K. Jindal, Advocate
for the petitioner (s).

Mr. Deepak Grewal, D.A.G., Haryana.

SURINDER GUPTA, J.

Petitioner Krishan Singh was convicted and sentenced to undergo life imprisonment and to pay a fine of ₹2000/- for the offence punishable under Section 302 read with Section 149 of Indian Penal Code vide judgment dated 17.07.2001 passed by Additional Sessions Judge, Bhiwani. Appeal filed by him and his co-convicts was dismissed vide judgment dated 16.09.2011. The petitioner has sought his pre-mature release as per provisions of policy dated 08.08.2000 of Government of Haryana regarding pre-mature release of the convicts. The case of the petitioner was considered under this policy vide order dated 22.09.2016 and it was ordered as follows:-

“The premature release case of life convict No.9757/C Krishan S/o Rama Nand R/o Village Milakpur, P.S. Bawani Kehra, District Bhiwani, convicted and sentenced for life imprisonment by the Addl. Sessions Judge, Bhiwani in case FIR No.159 dated 19.09.1998 P.S. Bawani Khera U/s 302/148/149 IPC confined in District

Jail Bhiwani, was considered on 07-09-2016 by the State Level Committee.

The total sentence undergone by the convict in jail upto 01.08.2016.

	Y	M	D
Actual Sentence	11	01	02
Total Sentence	14	01	16

The date of conviction of this life convict is 19-07-2001. So, the policy of Premature Release dated 08.08.2000 is applicable in this case. His case falls under Para 2(a)(Xii) (murder Exhibiting Brutality) of the above policy as this life convict along with other have shown Brutality as he committed murder by inflicting 21 injuries to deceased Ram Chander and thus he committed the murder of the deceased in a very Brutal manner.

“The post mortem report of victim reads as under:-

There were multiple fractures of right parietal and temporal bones. Both the bones were broken into pieces. Multiple haematoma of various sizes were present below scalp and in extradural and sub-dural spaces in right parietal and temporal regions. Broken pieces of right parietal bone were found lodged in brain matter below the laceration, damaging the brain tissue. On dissection of chest right thoracic cavity was full of blood. Fourth, fifth, sixth, seventh and eight ribs were fractured on their anterior lateral ends. There was a laceration of the size 5x2 cm on anterior lateral aspect of right lung. Clotted blood was found in lungs and cut section. Infiltration of blood was found in the injured area. As per this were ante mortem in nature and were sufficient to cause death in normal course of nature.

Accordingly, his case is to be considered after completion of 14 years of actual sentence including undertrial period, provided that the total period of such

sentence including remission is not less than 20 years.

He has completed 11 years, 01 month and 02 days actual sentence including undertrial period and 14 years, 01 month and 16 days total sentence including remissions and after deducting parole period.

Keeping in view the above said facts and the recommendations of the State Level Committee the premature release of this life convict will be reconsidered after completion of 14 years and 20 years total sentence as per policy dated 08.08.2000.

Learned counsel for the petitioner has argued that every murder has the element of brutality, as such, observation of the State Level Committee that the case of the petitioner falls under para 2 (a) (xii) of the State Policy defining murder exhibiting brutality is without any basis. In support of his contention, he has relied upon the observations of this Court in case of ***Gurbax Singh Vs. State of Haryana 1994 (3) RCR (Criminal) 342***, wherein the murder of son by father over petty sudden quarrel was not taken as heinous crime. In ***Harpal Singh Vs. State of Haryana, Crl. Writ Petition No.1419 of 2010 decided on 06.01.2011***, after perusal of para 2 (a) of the Policy, it was observed as follows:-

“The relevant portion of Clause/Paragraph 2(a) of the Policy (Annexure P/2) is re-produced below:-

“...murder exhibiting brutality such as cutting the body into pieces, or burning/dragging the body as is evident from judgement of sentence...”

A bare reading of this paragraph makes it clear that brutality can be exhibited either before or after the commission of the murder. The body can be cut into pieces only after murder and similarly the body can be burnt or dragged after the murder. The judgement of the trial court is to the effect that the petitioners caused

injuries on the different part of the persons Jaswinder Singh and Gurmit Singh and after causing their death dragged the dead bodies and took those to the house of Sangat Singh. This dragging of the dead bodies exhibits brutality as envisaged in paragraph 2(a), referred to above. The case of the petitioners fall under that paragraph and, as such, they are not entitled to premature release having not completed actual sentence of 14 years.”

As per the facts of the case, petitioner accompanied by his co-accused, had attacked and caused injuries to Ram Chander, father of complainant. The details of the occurrence find mentioned in para 3 of the judgment of learned Additional Sessions Judge, which read as follows:-

“3. On that day at about 7/8 A.M. complainant Pushpinder and his father Ram Chander were present at their house. At that time, Rama Nand and his son Ram Mehar came to their house and asked Ram Chander to accompany them so as to settle the dispute. On this, Ram Chander, accompanied Rama Nand and Ram Mehar and they were going towards the fields of Rama Nand. Complainant Pushpinder followed them. When Ram Chander, Rama Nand and Ram Mehar arrived near the KOTHRA constructed in the fields, Om Parkash, Krishan, Dharam Pal sons of Rama Nand as well as Rama Nand and Ram Mehar took out JELLIES, LATHIS and KULHARI from the KOTHA and immediately attacked his father with said weapons. Krishan gave 4/5 blows of Kulhari on the head of his father. Two blows of KULHARI were given on right arm and his father fell down. Rama Nand gave lathi blow on the chest of his father. Om Parkash gave lathi blow on the right leg and left shoulder of his father. Dharampal gave JELLY blow on his right arm. Ram Mehar gave LATHI blow on right

arm of his father. Kamla wife of Pushpinder also followed him and she had seen the occurrence with her own eyes.”

After the incident, Ram Chander was taken to Civil Hospital Bawani Khera in a Maruti car, from where he was referred to General Hospital, Bhiwani. On reaching General Hospital, Bhiwani he was declared dead. The deceased had 21 injuries on his person which included abrasions, lacerated wounds, reddish contusion etc.

Now, the question which arise for consideration in the given facts is as to whether the case of the petitioner is covered under para 2 (a) (xii) which reads as follows:-

“The Haryana Government has from time to time amended the policy regarding premature release of life convicts. There is a need to incorporate all the amendments made from time to time in the Policy at one place. As such, in view of life convicts will be considered hereafter as per policy laid down below. All earlier instructions issued in this regard, shall stand superseded.

- a) Convicts whose death sentenced has been Their case may be considered commuted to life imprisonment and after completion of 14 years convicts who have been imprisoned for life actual sentence including under of having committed a heinous crime such trial period provided that the as:- total period of.... Such sentence including remissions is not less than 20 years.

- i) to xi)
- xii) Murder exhibiting brutality such as cutting the body into pieces or burning/dragging the body as evident from judgement of the court.
.....”

The State Level Committee on the basis of post-mortem report has opined that there were 21 injuries on the person of deceased including various fractures and this depicts that the deceased was murdered in a very

brutal manner.

When a person is murdered, the element of brutality is always there. However, the provisions of para 2 (a) (xii) of the Policy appears to have been incorporated to cover the cases which show brutality, such as cutting the body into pieces, burning, dragging the body etc. The deceased after the incident was taken to Civil Hospital, Bawani Khera from where he was referred to General Hospital, Bhiwani. No doubt, several injuries were caused on the person of the deceased, out of which many injuries were of fracture. The petitioner, as per the allegations, caused 4/5 blows of *Kulhari* (axe) on the head of the deceased.

In case of *Gurbax Singh Vs. State of Haryana (supra)*, it was observed as follows:-

“It can hardly be doubted that in every murder there is an element of brutality and murder in itself is a heinous crime but if the State Government itself has chosen to classify murder in different ways for the purpose of premature release, it is bound by its instructions and they must be followed. It will be seen that paragraph 2(a) deals with a situation 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.”

In view of the observations in the aforesaid case, I agree with the submission of learned counsel for the petitioner that the case of the petitioner does not fall in the category of murder exhibiting brutality as defined in para 2 (a) (xii) of the State Policy. It is a case where deceased Ram Chander was caused injuries by 5-6 persons and after few hours of the incident, he had died. The case of the petitioner falls under para 2 (b) of the

State Policy. Consequently, this petition is allowed and order dated 22.09.2016 is set aside with direction to the authorities to re-examine the case of the petitioner as per para 2 (b) of the State Policy (**Annexure P-4**) and pass appropriate order.

August 21, 2017
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***