

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

**CRWP-1657 of 2016(O&M)
Date of decision:-3.8.2017**

Amrit Pal Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Prasang Raheja, Advocate
for the petitioner.

Ms.Jaspreet Kaur, AAG, Punjab.

H.S. MADAAN, J.

This criminal writ petition has been filed by petitioner - Amrit Pal Singh, an accused in FIR No.22 dated 25.2.1997, under Sections 392, 302 & 34 IPC, registered with Police Station Baghapurana, who was convicted and sentenced to undergo imprisonment for life by learned Sessions Judge, Faridkot vide judgment/order dated 22.5.2000 whereas his CRA-D-278-DB of 2000 and Criminal Revision No.995 of 2000 were dismissed by this Court vide order dated 14.10.2005.

According to the petitioner, his work and conduct remained good and satisfactory inside the jail and he has not committed any jail offence; that the petitioner has already undergone about 19 years and 11 months of actual punishment and 25 years and 11 months with remissions; that as per the Government Instruction dated 8.7.1991, a

prisoner is required to undergo 12 years actual sentence and with remissions 18 years and at present case of the petitioner is under the Category-B as per Government Instruction dated 8.7.1991; that case of the petitioner for grant of pre-mature release was duly recommended by the respondent NO.3 – Superintendent, Central Jail, Ludhiana, Punjab, which was rejected on 13.11.2013 by respondent NO.1 – State of Punjab on the ground that petitioner had committed heinous crime. According to the petitioner, such order passed by respondent No.1 is illegal, arbitrary, discriminatory and against the Government Policy dated 8.7.1991 and also against the law laid down by Hon'ble Apex Court in case *Maru Ram Versus Union of India, AIR 1980(SC) 2147* and *Sandhu Singh Versus State of Punjab*, wherein it was held that once the Government has issued instruction regarding pre-mature release, same are to be applied uniformly and invariable in order to avoid the charge of discrimination. According to the petitioner, his case falls under para 1.1.(B) of the instructions in terms of which petitioner was required to undergo 12 years actual sentence with remissions 18 years but his case was rejected without application of mind on the ground that he had committed a heinous crime. The petitioner contends that under similarly situated circumstances, pre-mature release has been given to various other prisoners. In the end, he prays that the impugned order be set aside and he be directed to be released pre-mature.

On notice, the respondents appeared through State counsel and written reply was filed on behalf of respondents No.1 to 3. It is contended that pre-mature case of the petitioner was initiated in the year 2013 and same was rejected on 13.11.2013 by the Chief Minister,

Punjab being competent authority under Section 432 Cr.P.C. because the petitioner had committed very ghastly murder of deceased Vijay Kumar by inflicting 29 injuries on his person; that the petitioner had filed CRWP No.57 of 2014 claiming pre-mature release and for quashing the aforesaid order dated 13.11.2013; that on 4.9.2014, this Court quashed the order of rejection dated 13.11.2013 and directed the respondents to re-consider the pre-mature release of the petitioner within four months in light of the relevant policy framed by the Government, which existed at the time of his conviction; that on 9.7.2014, Hon'ble Supreme Court had restrained all the State Governments from exercising power of remission and accordingly, pre-mature release case of the petitioner could not be considered at that time and speaking order dated 18.12.2014 was passed in pursuance of order dated 4.9.2014 of this Court; that on 23.7.2015 State Governments were allowed to exercise the power of remission subject to certain conditions, accordingly pre-mature case of the petitioner was again initiated and the Chief Minister, Punjab being competent authority granted benefit of pre-mature release of petitioner vide order dated 2.11.2015 subject to the condition that the pre-mature release order dated 2.11.2015 would come into effect only after completion of his second sentence i.e.10 years RI awarded under Section 392 IPC since Sessions Judge, Faridkot had specifically mentioned in his order of sentence dated 22.5.2000 that the life sentence under Section 302/34 IPC and ten years sentence awarded under Section 392 IPC would not run concurrently, therefore, in view of order of learned Sessions Judge, petitioner had been given the benefit of pre-mature release under Section 302/34 IPC and at present he is undergoing

his second sentence of ten years awarded under Section 392 IPC and this sentence has started to run on 23.11.2015. On merits, it is contended that petitioner had committed jail offence on 2.2.2003 by availing benefit of parole from 4.6.2002 to 17.7.2002 and 21.12.2002 to 2.2.2003 on the basis of fake documents; that consequently in case bearing FIR No.246 dated 21.12.2005, under Sections 465/467/468/471/420 IPC, Police Station Division No.7, Ludhiana had been registered against him in which he was convicted and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,200/- and in default of payment of fine, to undergo further rigorous imprisonment for seven months by Chief Judicial Magistrate, Ludhiana on 28.5.2009. It is contended that the petitioner has undergone 25 years under Section 302 IPC in case FIR No.22 dated 25.2.1997 and 4 years, 8 months and 20 days as on 5.6.2017 under Section 392 IPC. It is stated that pre-mature release policy is only an enabling provision and it does not confer a legal right on the petitioner to claim pre-mature release as a matter of right. In the end, such respondents pray for dismissal of the petition.

I have heard learned counsel for the petitioner and learned State counsel besides going through the record.

Learned counsel for the petitioner has referred to judgment **Jang Singh Versus State of Punjab, 2008(1) R.C.R.(Criminal) 323** by Full Bench of this Court wherein law with regard to concurrent running of sentences was summed up as follows:

"The consensus of the judicial opinion, as may emerge from different judgments passed by various High Courts and the Hon'ble Supreme Court, seems to be that normal rule, as per [Section 427](#) Cr.P.C., is that, a person who is undergoing

a sentence of imprisonment and is sentenced on a subsequent conviction to an imprisonment or an imprisonment for life, then such imprisonment of imprisonment of life shall commence after the expiration of the imprisonment, to which he has been previously sentenced. This, however, would not be so if the Court directs that the subsequent sentence shall run concurrently with the previous sentence. Such direction to make the sentences to run concurrently, as per various decisions noted above, can be exercised by the trial Court or by the appellate Court or a revisional Court at the time of exercising appellate or revisional jurisdiction as well. However, if the trial Court does not pass any such direction for making the sentences to run concurrently and appeal or revision against said decision is also decided, then it may not be open for a person to seek such direction for making the sentences to run concurrently by moving an application under [Sections 482/427 Cr.P.C.](#)" The view taken by one set of the High Courts that such an application can be entertained while exercising inherent powers under Section 482 Cr.P.C. would not more appear to be a good law in view of the decision of the Hon'ble Supreme Court in M.R. Kudva case (supra). We are, thus, bound to take this view that this discretion though available with the trial Court, appellate Court or the revisional Court while holding trial or entertaining appeal or revision but would not be available to be exercised in isolation when application in this regard is moved either under Sections 482 or 427 Criminal Procedure Code. What principle and consideration will govern the exercise of this discretion, as already noted above cannot be exhaustively enumerated. Certain relevant factors, as can be culled out from different judgments referred to above, may give n indication where such discretion may be exercised. These factors generally would be the nature or character of the offences committed, the

prior criminal record of the offender, character his age and sex etc. ghastly nature of the crime. The offender being habitual would also be the factor, which can be relevantly taken into consideration. It may be stated at the cost of repetition that these are not the only reasons for which the Court can exercise this discretion. Discretion always is open to be exercised by any Court dependent upon the facts and circumstances of each case on any relevant or valid consideration as may be considered so by the Court while holding the trial or deciding the case at the stage of appeal or revision. It may require a notice that Section 427 Criminal Procedure Code as observed by Hon'ble Supreme Court is aimed at amelioration and this aspect may also require to be kept in view while exercising the discretion.

There are, thus, no set guidelines, principles which would govern the exercise of discretion under Section 427(1) Criminal Procedure Code Section leaves a judicial discretion with the Courts to exercise such discretion depending on the facts and circumstances of each case. Some indication of such consideration is available from judicial pronouncements as enumerated above, which we would approve to be relevant and valid for taking into account while exercising discretion.

He has referred to judgment ***O.M.Churian @ Thankachan Versus State of Kerala and others*** passed in Criminal Appeal No.2387 of 2014 arising out of SLP (Criminal) No.2487 of 2014 by the Apex Court wherein it was observed as under:

Accordingly, we answer the Reference by holding that Section 31 Cr.P.C. leaves full discretion with the Court to order sentences for two or more offences at one trial to run concurrently, having regard to the nature of offences and attendant aggravating or mitigating circumstances. We do not find any reason to hold that normal rule is to order the

sentence to be consecutive and exception is to make the sentences concurrent. Of course, if the Court does not order the sentence to be concurrent, one sentence may run after the other, in such order as the Court may direct. We also do not find any conflict in earlier judgment in Mohd. Akhtar Hussain and Section 31 Cr.P.C.

However, learned State counsel has submitted that the facts of the present case are quite different since learned Sessions Judge, Faridkot vide his judgment passed in FIR No.22 dated 25.2.1997, under Sections 302 read with Section 34 and 392 of IPC, Police Station Baghapurana, while convicting and sentencing the accused has specifically observed as under:

“The sentences are not to run concurrently due to the ghastly murder of Vijay Kumar committed by the convicts by causing 29 injuries and also committed robbery on the highway between sunset and sunrise.”

Therefore, due to judicial order the petition cannot be accepted.

After hearing the contentions raised by learned counsel for the petitioner and learned State counsel besides going through the record, I find that petition is bound to fail in view of the specific direction issued by learned Sessions Judge, Faridkot in his judgment dated 22.5.2000, vide which Amrit Pal Singh and his co-accused were convicted and sentenced for the offences under Sections 302 read with Section 34 IPC and 392 and that sentences are not to run concurrently and such judgment having been upheld even up to this Court, there is no scope for directing otherwise. There cannot be any dispute with the authorities referred to by learned counsel for the petitioner but keeping

in view the peculiar facts and circumstances of the case as discussed supra, the sentences cannot be ordered to be run concurrently. Therefore, the petitioner cannot be ordered to be released unless he completes the sentence which he is yet to do and his detention is certainly not illegal, arbitrary or against Government policy.

Finding no merits in the petition, the same stands dismissed.

3.8.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No