

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No. 558 of 2017  
Date of Decision: 01.11.2017

Bharat ...Petitioner

VERSUS

State of Haryana and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

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

Mr. Deepak Grewal, DAG, Haryana.

Mr. Satyaveer Singh, Advocate  
for the complainant.

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SURINDER GUPTA, J.(Oral)

Petitioner-Bharat was convicted and sentenced by the trial Court in case bearing FIR No. 414 dated 06.01.2004, registered at Police Station City Bhiwani, as follows:-

| <i>Section</i>               | <i>Punishment</i>                                                                                                                         |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 302 read with Section 34 IPC | Imprisonment for life and to pay fine of ₹10,000/-. In default of payment of fine to further undergo rigorous imprisonment for two years. |

2. The petitioner filed appeal, which was dismissed and conviction and sentence awarded to him by the trial Court was upheld.

3. It is admitted that policy regarding pre-mature release of life convict as promulgated vide letter dated 12.04.2002 by State of Haryana is applicable to the petitioner, who has undergone sentence, which find

mentioned in para 11 of the reply of State as follows:-

| Sr. No. | Period                                                                | Y         | M         | D         |
|---------|-----------------------------------------------------------------------|-----------|-----------|-----------|
| 1       | Under trial period from 14.11.04 to 07.12.05 & 22.02.07               | 01        | 00        | 25        |
| 2       | Conviction period from 23.02.07 to 29.06.17                           | 10        | 04        | 07        |
| 3       | <b>Total</b>                                                          | <b>11</b> | <b>05</b> | <b>21</b> |
| 4       | Bail period (-) from 23.03.07 to 03.04.07 & form 26.03.08 to 05.04.08 | 00        | 00        | 21        |
| 5       | <b>Actual sentence undergone</b>                                      | <b>11</b> | <b>04</b> | <b>11</b> |
| 6       | Remissions earned (+)                                                 | 04        | 01        | 26        |
| 7       | <b>Total</b>                                                          | <b>15</b> | <b>06</b> | <b>07</b> |
| 8       | Less parole availed (-)                                               | 01        | 01        | 10        |
| 9       | <b>Total Sentence Undergone</b>                                       | <b>14</b> | <b>04</b> | <b>27</b> |

4. Clause 2 (b) of the Policy of 2012 reads as follows:-

|                                                                                                                                                                                                                                    |                                                                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <i>(b) Adult life convicts who have been imprisoned for life but whose cases are not covered under (aa) and (a) above and who have committed crime which are not considered heinous as mentioned in clause (aa) and (a) above.</i> | <i>Their cases may be considered after completion of 10 years actual sentence including under-trial period provided that the total period of such sentence including remissions is not less than 14 years.</i> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

5. The case of petitioner for pre-mature release was considered by the State Level Committee but was declined with the observation that he is covered under para 2 (a) (xiii) of the Policy of 2002.

6. While supporting the decision of competent authority, learned State counsel has drawn my attention to para 71 of the judgment of learned Additional Sessions Judge, Bhiwani whereby the accused facing trial in the case was convicted as follows:-

“71. So, in view of the evidence and law discussed above and reasons recorded therein, I am of the view that the

*prosecution has successfully proved that allegations contained in the charge-sheet against the accused that on 05.11.2004, at about 7.30 in the area of near Panwari Wala Mandir, Police Station City, Bhiwani, accused Rahul, Satneder and Bharat in furtherance of their common intention committed murder of Ramesh Masta and thereby committed an offence punishable under Section 302 read with Section 34 of the IPC, that on the same date, time and place, accused Rahul, Satender and Bharat had committed the murder of Ramesh Masta and accused Karambir, Manjit and Banti alias Yogender Singh, had abetted the said accused in the said offence and thereby committed an offence punishable under Section 109 of the IPC, read with Section 302 of the IPC, that accused Rahul, Satender, Bharat, Karambir, Manjit Singh and Banti alias Yogender Singh, prior to the date of occurrence hatched the conspiracy in order to commit the murder of Ramesh Masta and thereby committed an offence punishable under Section 120-B of the IPC, that on 10.11.2004 in the area of Sanjarwas, accused Rahul was found in possession of one country made pistol of .315 bore without any permit or licence and thereby committed an offence punishable under Section 25 of the Arms Act and that on 11.11.2004 in the area of near Sheela by-pass, Rohtak, accused Satender was found in possession of one pistol .315 bore and one missed cartridge, without any permit or licence and thereby committed an offence punishable under Section 25 of the Arms Act. So, I found all the accused guilty for the offences charge against them and convict them thereunder, respectively. Let they be heard on quantum of sentence.”*

7. Learned State counsel has argued that even if the petitioner has not been awarded any sentence under Section 120-B IPC but he was

convicted for the same and his conviction and sentence was upheld by this Court vide judgment dated 30.11.2011 (Annexure P-2) in CRA-302-DB of 2007.

8. On perusal of judgment (Annexure P-2) passed by Division Bench of this Court, I find that this Court has discarded the plea of prosecution about conspiracy to commit crime in this case and convicts, namely, Banti @ Yogender Singh, Satender, Karambir and Manjit Singh, who were convicted by the trial Court for offences punishable under Sections 109 and 302 IPC read with Section 120-B IPC, were acquitted. This shows that the case of prosecution that accused named in this case have conspired to commit crime was discarded. Observations to this effect in judgment passed in CRA-302-DB-2007 are reproduced as follows:-

*“So far as the evidence led by the prosecution qua conspiracy is concerned, the statement of PW-3 Ghanshayam Dass fails to inspire confidence. The said witness had gone to the house of appellant Karambir a couple of days prior to the death of Ramesh Masta. Ramesh Masta had died on 05.11.2004 at 09.55 p.m. However, the statement of PW-3 was recorded by the police on 30.01.2005 for the first time. The said witness in his cross-examination deposed that he had never met the police prior to recording of his statement. The investigating officer had also not met him. He had not been called by the police. The said witness resides near the house of Karambir and the deceased. He further deposed that he had gone to the hospital to enquire about the cremation of deceased Ramesh Masta nor had gone to his house to offer condolence. He was joined by the police during investigation of the previous incident. Thus, from the statement of PW-3, it is evident that he did not disclose the talk heard by him to anybody prior to recording of his statement on 30.01.2005. Surprisingly, the name of the said witness was duly mentioned*

*in the list of witnesses in the final report prepared by the investigating officer on 06.01.2005. The said report is available on record as Ex. DA/1. A perusal of the same reveals that the names of Satish Kumar and Ghanshayam Dass are mentioned at serial nos. 9 and 10 in the list of witnesses (Ex. DC). Since PW Ghanshayad Dass had not met the police prior to recording of his statement on 30.01.2005, then how his name could be mentioned in the list of witnesses in the final report prepared on 06.01.2005. Learned State counsel, who is failed to reconcile the said discrepancy. In these circumstances, the statement of PW-3 Ghanshayam Dass fails to inspire confidence. It appears that the said witness has been introduced by the prosecution to involve appellants Karambir, Majit Singh and Banti in this case. Hence appellants Karambir, Majit Singh and Banti are liable to be acquitted.”*

9. As per para 2 (a) (xiii) of the Policy of 2002, case of “convicts, who have been imprisoned for life under Section 120-B IPC” can be considered for their pre-mature release after completion of 14 years actual sentence including under-trial period provided that total period of such sentence including remissions is not less than 20 years.

10. It is clear that petitioner was not sentenced for life for offence punishable under Section 120-B IPC. It appears that the trial Court while recording the sentence convicted all the accused named in the case for offence punishable under Section 120-B IPC but while awarding the sentence the petitioner was not awarded sentence under Section 120-B IPC. This Court discarded the conspiracy angle of the case and acquitted the convicts, who were convicted for offences punishable under Section 120-B IPC. From above facts, it is evident that the petitioner has only been sentenced for offence punishable under Section 120-B IPC and his case is covered by para 2 (a) (xiii) of the Policy of 2002, as such, the said order is

not sustainable.

11. As a sequel of my above discussion, the instant petition is allowed and order dated 03.04.2017 is set aside. Directions are issued to respondents to reconsider the case of petitioner for his pre-mature release in accordance with Policy of 2002, within a period of six weeks from the date of receipt of copy of this order.

November 01, 2017

*jk*

( SURINDER GUPTA )  
JUDGE

***Whether speaking/reasoned:***

***Yes/No***

***Whether Reportable:***

***Yes/No***