

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

CRWP 574 of 2017

Date of Decision: September 4, 2017

Khushwant Rai @ Goldi

.....Petitioner

Vs.

State of Punjab and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.  
HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH.

-. -

Present: Mr. S.S. Rana, Advocate for the petitioner

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

-. -

**M.M.S. BEDI, J. (ORAL)**

The petitioner through instant petition under Article 226 of the Constitution of India has prayed for a direction to the State to grant premature release, he having completed his sentence as per para 431 of the New Punjab Jail Manual, 1996.

As per the judgment of the Apex Court in **Union of India Vs. V. Sriharan @ Murugan and others**, 2015 (3) RCR (Crl.) 875, State Government has got power to grant remission to the life convicts but this power is subject to limitations. The limitations which have been clarified in para 4 of the said judgment are as follows:-

- “1) Where life sentence has been awarded specifying that –*
- (a) the convict shall undergo life sentence till the end of his life without remission or commutation;*
  - (b) the convict shall not be released by granting remission or commutation till he completes a fixed term such as 20 years or 25 years or like.*
- ii) Where no application for remission or commutation was preferred, or considered suo motu by the concerned State Governments/authorities.*
- iii) Where the investigation was conducted by any Central Investigating Agency like the Central Bureau of Investigation.*
- iv) Where the life sentence is under any central law or under Section 376 of the Indian Penal Code, 1860 or any other similar offence.”*

Learned counsel for the appellant has submitted that the direction issued by the Apex Court in his appeal do not prohibit the grant of remission or commutation and that his case is distinguishable from that of his co-convicts.

With the assistance of counsel for the petitioner, we have gone through the judgment passed in CrI. Appeal No. 598 of 2005-State of Punjab Vs. Kulbir Singh and another, wherein the Apex Court had taken into consideration six appeals i.e. CrI. Appeal No. 598 of 2005, CrI. Appeal Nos.75-78 of 2006 and CrI. Appeal No. 81 of 2006. The operative part of the judgment of the Supreme Court is as follows:-

*“Following the aforesaid precedents and having regard to the facts and circumstances of the*

*case and also the fact that the offence was committed eight years ago, we affirm the sentence of imprisonment for life passed against the accused respondents but direct that the aforesaid respondents accused will not be entitled to any commutation or premature release under Section 433A of the Code of Criminal Procedure, Prisoners Act, Jail Manual or any other statute and the Rules made for the purpose of commutation and remissions. Subject to the aforesaid directions, Criminal Appeal No.598 of 2005 and Criminal Appeal No. 75-78 of 2006 are dismissed. In the result, **all** the appeals before us are dismissed subject to the aforesaid directions.”*

Counsel for the petitioner has tried to carve out an exception from the direction regarding disentitlement to any commutation or premature release under Section 433 A of the Cr.P.C., Prisoners Act, Jail Manual or any other statute for the purpose of commutation or remission on the ground that the Crl. Appeal No. 81 of 2006 is not mentioned in the above said operative part of the judgment of the Supreme Court.

We have carefully considered the contention of learned counsel for the petitioner. The operative part of the judgment specifically no doubt mentions the applicability of above said prohibition in Crl. Appeal No. 598 of 2005 and Cr. Appeal Nos. 75-78 of 2006 but it has been specifically mentioned in the concluding lines that **all** the appeals taken up by the Supreme Court were dismissed subject to the directions mentioned in the judgment.

In view of the said circumstances, it will not be appropriate for this Court to interpret the judgment of the Supreme Court in such a manner

that Appeal No. 81 of 2006 filed by the petitioner could be considered as being not covered by the directions whereas the Hon’ble Supreme Court has used the word “**all**” for the purpose of the above said directions.

At this stage counsel for the petitioner submits that he may be permitted to withdraw this petition with liberty to seek the clarification from the Supreme Court.

This petition is dismissed. However, it will be open to the petitioner to approach the Supreme Court for clarification, if any.

(M.M.S. BEDI)  
JUDGE

September 4, 2017  
sanjay

(AUGUSTINE GEORGE MASIH)  
JUDGE

|                             |          |
|-----------------------------|----------|
| Whether speaking/ reasoned: | Yes/ No. |
| Whether reportable:         | Yes/No.  |