

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No. 617 of 2017
Date of Decision: 28.09.2017

Mahender Singh and another ...Petitioners

VERSUS

State of Haryana and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. D.N. Ganeriwal, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

SURINDER GUPTA, J.(Oral)

Heard.

Petitioners, Mahender Singh and Pawan Kumar, alongwith co-accused Rajender Singh and Shera Ram were convicted and sentenced to undergo imprisonment for life for offence punishable under Section 302 read with Section 34 of Indian Penal Code (for short 'IPC'). Petitioner no. 2- Pawan Kumar was also sentenced to undergo rigorous imprisonment for two years for offence punishable under Section 324 IPC.

Case of co-convict Rajender Singh was considered by the competent authority and vide order dated 22.09.2016, he was allowed pre-mature release. Operative portion of the order reads as follows:-

***“HARYANA GOVERNMENT
JAILS DEPARTMENT
ORDER***

In exercise of the powers conferred by sub-section (i) of Section 432 read with Section 433 of the Code of Criminal Procedure, 1973 (Act 2 of 1974), the Governor of Haryana is hereby pleased to remit the unexpired portion of the sentence passed on the prisoner no. 5968/C Rajender Singh s/o Sher

Ram R/o Village Mammar Khera, PS Rania, District Sirsa in case FIR No. 59 dated 20.02.2006 P.S. Rania U/s 302/324/34 IPC confined in District Jail, Sirsa and further directs his release on his acceptance in writing of the following conditions in terms of Haryana Government Memo No. 36/135/91-IJJ(II) dated 21.01.1998”

When the case of petitioners for grant of pre-mature release was considered by the State Level Committee, they were declined pre-mature release with the observations as follows:-

“The date of conviction of the convict is 25.04.2008. So, the policy of premature release dated 12.04.2002 is applicable in this case. His case is covered under para 2(a)(xiv) (any other crime that the State Level Committee considers to be 'Heinous' for reasons to be recorded in writing) of policy dated 12.04.2002. This convict had committed the murder of his cousin brother and gave 10 incised injuries to him. Giving repeated and reckless blows on head and face of victim with sharp weapon is a heinous crime.

3. *The life convict has completed 10 years 08 months and 14 days actual sentence including under trial period and 14 years and 03 months and 28 days total sentence including remissions after deducting parole period. The convict has not completed his requisite 14 years actual sentence and 20 years total sentence as per the policy dated 12.04.2002 and does not qualify for premature release at this stage.”*

Learned counsel for petitioners has drawn my attention towards facts of the case in support of his contention that injuries attributed to petitioners are similar in nature to injuries attributed to co-accused-Rajender Singh. He has referred to para 2 of the judgment, where facts of the case and statement of complainant have been discussed, wherein he has stated as follows:-

“.....In my presence Rajender inflicted a gandas blow on the left side of head of my son Ranbir. Pawan inflicted a gandas blow on the right eye of Ranbir and Mahender caused a gandas blow on right hand of Ranbir. My son fell on the ground. All these persons further caused injuries to my fallen son with their respective weapons.....”

Perusal of above facts show that role attributed to petitioners is similar to role attributed to Rajender Singh and all the three alongwith Shera Ram were convicted and awarded the similar punishment.

In view of above, there was no reason to draw any distinction in the case of petitioners, which is on parity with the case of Rajender Singh.

Learned State counsel while explaining the distinction in case of petitioners and co-convict Rajender Singh has argued that the State had issued warrants of re-arrest in case of eight convicts, who had been allowed pre-mature release. (However, those convicts do not include Rajender Singh and case of Rajender Singh was never reconsidered). Those convicts filed writ petitions and this Court stayed their re-arrest. Thereafter, State did not issue re-arrest warrant of any accused, who had been allowed pre-mature release. The submission of learned counsel for petitioners carries no merit so far as the question for grant of pre-mature release to petitioners is concerned as their case was duly considered by State Level Committee and rejected for pre-mature release at this stage.

I find no reason to agree with learned State counsel as the case of petitioners is on parity with co-convict Rajender Singh, who has already been allowed pre-mature release. Petitioners and Rajender Singh were convicted for similar offence and awarded similar sentence. It otherwise appears to be unjust and inequitable that one convict has been allowed pre-mature release while other two similarly placed have been denied the same.

In view of my above discussion, this petition is allowed and order dated 03.04.2017 (Annexures P-3 and P-4) passed by Additional Chief Secretary to Govt. of Haryana, Jails Department are set aside with direction to reconsider the case of petitioner in the light of similar benefit already allowed to co-convict Rajender Singh and pass appropriate order within two months, of receipt of copy of this order.

September 28, 2017
jk

(SURINDER GUPTA)
JUDGE

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

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