

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

CRM-M-32587-2018 (O&M)

Date of Decision:-3.10.2018

Mota Ram

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. P.K. Ganga, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

By way of filing this petition, the petitioner, who stands convicted for having committed offence punishable under Section 18 of Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as '*the Act*') and who has been sentenced to undergo rigorous imprisonment for 10 years and also to pay fine amounting to ₹ 1 lac, seeks direction to be issued to the respondents to release him on the ground that he has completed his sentence of imprisonment including the remissions period as provided under the provisions of Haryana Jail Manual Act.

The details of the custody period as mentioned in para-5 of the petition read as follows:-

“That the petitioner was remain in custody during Trial from 05.10.2007 to 28.07.2012 for a total period of 2 years, 7 months & 17 days. Now, the total custody of the petitioner is 6 years 10 months 29 days as on 03.02.2018 and till date the petitioner is in custody. The petitioner has completed his total actual sentence more than 7 years 6 months. In view of the provision of Jail Manual of Haryana, there is provision that Jail Authority have the jurisdiction to release the person, who completed his 75% sentence from the total sentence, by keeping the conduct of the said prisoner. Therefore the keeping in view of the aforesaid

provision, the petitioner is entitled to release from the jail as he has completed his 75% of his actual sentence and his act & conduct is good and he is entitled for remission provided under the Haryana Jail Manual Act.”

The learned counsel has submitted that since the petitioner has already undergone more than 7 years of actual sentence of imprisonment, therefore, the petitioner deserves to be released as he would also be entitled to remissions.

I have considered the aforesaid submissions.

As per Section 32-A of the Act, there is a specific bar for grant of remissions to convicts, who stand convicted for offences under the Act. Section 32-A of the Act reads as follows:-

“32-A. No suspension, remission or commutation in any sentence awarded under this Act-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force but subject to the provisions of section 33, no sentence awarded under this Act (other than section 27) shall be suspended or remitted or commuted.”

The said bar against grant of remissions came to be considered by Hon’ble the Supreme Court in Dadu @ Tulsidas Versus State of Maharashtra 2000(4) R.C.R. (Criminal) 275, wherein it has been held that Section 32-A of the Act, which takes away the power of the executive to grant remissions, is constitutionally valid.

In yet another case, Hon’ble the Supreme Court in 2016(3) RCR (Criminal) 482, Tara Singh & Others Vs. Union of India & Ors., while dealing with the matter pertaining to grant of remissions held to the following effect:

- (1) Court cannot grant remission to a person convicted under NDPS Act on grounds of his good conduct in jail and that Section 32A of NDPS Act bars the entitlement of remission.
- (2) A writ of mandamus cannot be issued to authorities to grant remission to the petitioners.
- (3) Constitutional power of clemency of President of India and Governor of State under Articles 72 and 161 of Constitution of India as regards grant of remissions are different than the statutory power enshrined under Section 433A Cr.P.C. and the said Constitutional powers remain unaffected with section 32A of NDPS Act and convicts can be granted remissions in exercise of powers under Articles 72 and 161 of Constitution of India.

In view of the aforesaid settled legal position, the petitioner cannot claim any right for grant of remissions. The petition, as such, is sans any merit and is hereby dismissed.

3.10.2018

pankaj

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No