

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRWP No. 660 of 2017 (O&M)

Date of decision : 30.1.2018

...

Basant @ Bhola

.....Petitioner

vs.

State of Haryana and others

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Naresh Kaushik, Advocate for the petitioner

Mr. Neeraj Poswal, Assistant Advocate General,
Haryana.

...

H. S. Madaan, J.

This petition praying for issuance of criminal writ in the nature of habeas corpus directing immediate release of petitioner from jail holding completed sentence and conviction in FIR No. 65 dated 7.4.2003, for offences under Sections 395, 412 IPC, registered at Police Station Narnaund, District Hisar, as conviction and sentence had been reduced to rigorous imprisonment for 7 years vide order dated 21.1.2015 passed in CRA-S-1250 of 2010, by this Court, further holding the petitioner entitled for compensation of Rs.10 lacs

treating the overstay period in jail beyond 7 years as illegal detention, has been filed by petitioner – Basant @ Bhola, who was convicted in FIR No. 67 dated 6.4.2003 under Sections 395, 120-B IPC and Section 25 of the Arms Act registered at Police Station Sampla, District Rohtak, by Additional Sessions Judge, Rohtak, vide order dated 10.1.2004 and sentenced to rigorous imprisonment for 10 years, against which he had filed a criminal appeal vide CRA-S-170-SB of 2004 and this Court had reduced the sentence of the petitioner from rigorous imprisonment of 10 years to rigorous imprisonment for 7 years.

Inter alia in the petition, it is contended that as per the custody certificate dated 23.10.2016, issued by Superintendent, District Prison, Karnal, the petitioner has already undergone sentence of 7 years, 1 month and 3 days as on 15.2.2008, in that way completing his sentence in FIR No. 67 dated 6.4.2003; that the petitioner was also involved in another FIR No. 65 dated 7.4.2003, under Sections 395, 412 IPC, Police Station Narnaund, District Hisar, in which he was convicted and sentenced by Additional Sessions Judge, Hisar, vide order dated 17.8.2007, awarding sentence of rigorous imprisonment for 10 years, which on appeal filed by the petitioner before this Court was reduced to 7 years and he is in custody in the said case for 6 years, 1 month and 19 days, as per custody certificate dated 23.10.2016. Since sentence in both the cases has not been ordered to run concurrently, therefore, petitioner had to undergo 7 years sentence/custody in each case, though he has completed 7 years of imprisonment in FIR No. 67 and in other cases

bearing FIR No. 65, has undergone 6 years, 1 month and 19 days, as on 23.10.2016 and is short of 7 years by about 10 months and 12 days; that the petitioner was on bail and had not surrendered in FIR No. 65 for completing the remaining sentence. However, he was arrested on 3.10.2016 and since then he is lodged in Central Jail, Hisar. In the petition, the details of custody period as on 23.10.2016 have been given as under:-

<i>Sr. No.</i>	<i>Particulars</i>	<i>Period</i>	<i>Year</i>	<i>Month</i>	<i>Days</i>
1	Under trial period	From 10.4.2003 to 16.8.2007	4	4	7
2	Conviction period	From 12.8.2010 to 23.5.2012	1	9	12
3	Actual sentence		6	1	19

In custody from 3.10.2016 onwards as on 25.5.2017.

October 2016	=	28 days
November 2016	=	30 days
December 2016	=	31 days
January 2017	=	31 days
February 2017	=	28 days
March 2017	=	31 days
April 2017	=	30 days
May 2017	=	25 days

Total	=	234/30 = 8 months

According to the petitioner, he is entitled to remission and other concessions as per the State Policies and considering that sentence of 7 years in FIR No. 65 has already been completed, but the Jail authorities are not considering such facts and not releasing the petitioner.

According to the petitioner he was involved in one FIR No.

33 dated 13.2.2008 under Section 8/9 of Parole Act, Police Station Beri, for over stay/absent from parole, wherein he was sentenced to 2 years and 7 days of impressment, which he had already undergone. The period of that conviction has nothing to do with the present petition. That in another FIR No. 219 dated 22.9.2002, he was acquitted vide judgment dated 12.9.2011. According to the petitioner, the orders passed by this Court in both the appeal have attained finality. The petitioner prays that petition be allowed.

On notice, respondents appeared and have filed joint written reply contesting the petition, making preliminary submissions that petitioner was first time convicted and sentenced for 10 years rigorous imprisonment in FIR No. 67 dated 6.4.2003 under Section 392 IPC, Police Station Sampla, by Additional Sessions Judge, Rohtak on 10.1.2004. However, he was released on bail on 12.8.2010 as per order dated 2.7.2010 passed by this Court in Cr.M.No. 25407 of 2010 in Cr. Appeal No. 170-SB of 2004. 10 years rigorous imprisonment was reduced to 7 years by this Court vide order dated 7.1.2015 and reduction warrant was received in the office of Superintendent of Jail, District Jail, Rohtak on 10.12.2005. On receipt of reduction warrant issued by Chief Judicial Magistrate, Rohtak, the petitioner was released on 11.12.2015 on expiry of sentence since the petitioner had completed the said sentence including under trial period/remissions earned and was detained in jail as convict in other case FIR No. 65 dated 7.4.2003 under Sections 395/412 IPC, Police Station Narnaund, in which he was convicted second time on 9.8.2007. Prior to 7.1.2015, the petitioner

was undergoing sentence for 10 years rigorous impressment and not 7 years. The sentence was reduced by this Court on 7.1.2015 and on that date the petitioner had completed 7 years rigorous imprisonment, including under trial period and excluding parole etc. That vide judgment dated 9.8.2007, Additional Sessions Judge, Hisar, had convicted and sentenced the petitioner to 10 years rigorous imprisonment in case FIR No. 65 dated 7.4.2003 for offences under sections 395, 412 IPC. The sentence started running on 12.8.2010, after the petitioner was released on bail in case FIR No. 67 dated 6.4.2003 in terms of Section 427 Cr.P.C.. He was released on bail on 23.5.2012 in FIR No. 65 dated 7.4.2003, in compliance of order passed by this Court in CrI.Appeal No. 1993-SB of 2007 and CRA No. 1250 SB of 2010 and 10 years rigorous imprisonment was reduced to 7 years rigorous imprisonment. The petitioner remained in custody from 8.4.2003 to 8.8.2003 vide letter No. 112 dated 7.2.2017 of Additional Sessions Judge, Hisar. The custody period in case FIR No. 65 dated 7.4.2003 as on 21.8.2017 is as under:-

Under trial period from 8.4.2003 to 8.8.2003	00	04	01
Conviction period from 12.8.2010 to 23.5.2012	01	09	12
From 30.11.2015 to 21.8.2017	01	08	21
Remission	00	05	01
Total	04	03	05

The petitioner has completed only 4 years, 3 months and 5 days imprisonment, alongwith under trial period and remission in this case till 21.8.2017. That the petitioner was admitted in jail on 30.11.2015 to undergo 7 years rigorous imprisonment in FIR No. 65

dated 7.4.2003 by order of Chief Judicial Magistrate Hisar. On dismissal of Crl.Appeal No. 1993-SB of 2007 and CRA No. 1250-SB of 2010. Custody period of this case was analyzed in which there was a confusion found, therefore, correspondence was made to the that successor Court of Mr. Vimal Kumar, Additional Sessions Judge, Hisar. That 4 years, 4 months and 7 days under trial period from 10.4.2003 to 16.8.2007 is not correctly mentioned in column No.1 of custody certificate dated 23.10.2016 submitted by Deputy Superintendent, District Jail, Karnal, in this Court. That three weeks parole was granted to the petitioner by this Court vide order dated 11.7.2006 in Crl.M.No. 30605-M of 2006. He was released accordingly on 17.8.2006 on his furnishing requisite sureties bond to the satisfaction of District Magistrate, Jhajjar with a direction to surrender at jail gate on 8.9.2006. The petitioner was asked to appear in the trial Court on 6.9.2006 in case FIR No. 65 /2003 and an entry in that regard was made on the warrant by Deputy Superintendent of Jail, Rohtak, obtaining thumb impression of the petitioner thereon. In the end, the respondents pray for dismissal of the petition.

After hearing learned counsel for the petitioner, learned State counsel, besides going through the record, I conclude that the explanation rendered by the respondents for not releasing the petitioner from jail for the reason that he has not completed his sentence, is convincing and plausible. The necessary calculations have been furnished in the written reply. The petitioner can certainly not take advantage of any stray entry in the record to come up with the plea that since he has completed the period of custody, as such he

is entitled to be released or that his further custody is illegal.

The petition is without any merit and is dismissed accordingly.

(H.S. Madaan)
Judge

30.1.2018

chugh	Whether speaking / reasoned	Yes / No
	Whether reportable	Yes / No