

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10011-2018 (O&M)
Date of decision:06.12.2018

Jogender

.....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Rahul Deswal, Advocate
for the petitioner.

Mr. Nishchal Mann, DAG, Haryana.

Kuldip Singh, J. (Oral)

Petitioner has filed this petition under Article 226/227 of Constitution of India for issuance of Writ in the nature of certiorari for quashing of order dated 13.06.2016 (Annexure P-4), passed by Additional Chief Secretary to Government, Haryana, Jails Department, wherein, case of premature release of the petitioner, was rejected. Petitioner seeks mandamus for his premature release.

It comes out that the petitioner was convicted and sentenced in FIR No.307 dated 31.07.1999, under Sections 302, 307, 34 IPC and 25 of Arms Act, registered at Police Station City Sonapat, District Sonapat on 25.09.2001 (Annexure P-2) by learned Additional Sessions Judge, Sonapat and appeal bearing No.CRA-578-DB-2011 against the said judgment was dismissed on 08.03.2010 (Annexure P-3) by this Court. The petitioner

claimed that he has completed requisite period and entitled for benefit under Policy dated 08.08.2000(Annexure P-1) and his case is entitled to be considered for premature release. However, vide order dated 13.06.2016 (Annexure P-4), the case of the petitioner was wrongly rejected on the ground that it was a brutal murder and covered under Para 2(a)(xii) of the said Policy dated 08.08.2000 (Annexure P-1).

In the reply , State has maintained that it was a brutal murder and the petitioner has to undergo actual sentence of 14 years and with remission, 20 years.

I have heard learned counsel for the parties and carefully gone through the file.

Perusal of the order dated 13.06.2016 (Annexure P-4) shows that on the date of passing of the said order, petitioner had undergone actual sentence of 11 years & 26 days and total sentence of 14 years. The Government took the view that it was a brutal murder and therefore, case of the petitioner is covered under Para 2(a)(xii) of the Policy dated 08.08.2000 (Annexure P-1). Therefore, he has to undergo requisite sentence of 14 years and with remission 20 years. Hence, he cannot be prematurely released. His case will be reconsidered when he will undergo the requisite sentence.

Learned counsel for the petitioner vehemently argued that it was not a brutal murder. For this purpose, reliance has been placed before the authorities decision of the Co-ordinate Single Bench in the ***CWP-5780-2018 titled as Yash Pal vs. State of Haryana and others*** and ***CRWP-1541-2016 titled as Krishan vs. State of Haryana***. Despite 21 injuries it was held

that it was not a brutal murder. In case of Krishan's case (supra) it was observed that in every murder, there is an element of brutality and in that case, it was held that it was not a brutal murder.

I am of the view that each case depends upon facts of the case. In the present case, the petitioner along with co-accused committed the murder of Jai Dev at Kakroi Chowk at Sonapat. The present petitioner was carrying a pistol and his co-accused was carrying *Dav* which is instrument of cutting. The injuries were caused on neck, hand and chin to Jai Dev and when complainant and one Sunil tried to overpower the assailants, accused Jogender Singh fired. The motive for the crime was alleged to be dispute regarding tethering cattle in Shamlat deh in the year 1995. In order to examine whether it is brutal murder or not, this Court has gone through postmortem report of Dr. R.N. Rehlen-Medical Officer (PW-10) as produced in the judgment. The postmortem report shows that there were 15 injuries on the body of Jai Dev. There was one punctured and lacerated wound on the right lower front of chest, bullet was lying on posterior wall at 11/12 ribs and 9th rib was fractured. Injuries of the co-accused shows that most of the injuries are on head, chin and neck. The spinal code was divided. The left hand was found hanging down attached with skin only. The murder was committed in broad daylight at a place where people board the bus.

Looking at the injuries, I am of the considered view that it is a brutal murder. Now the policy of the Government shows that under Clause 2(a)(xii), one of the heinous crime is described as under:-

“(xii) Murder exhibiting brutality such as cutting the body into pieces of burning/dragging the body as evident from judgment of the Court.”

It covers the murder exhibiting brutality such as cutting the body into pieces, burning or dragging the body as mentioned in the judgment of the Court. The cutting, dragging and burning of the body are some of the examples. It is seen from the judgment that the murder was committed with brutality.

After going through the injuries, this Court is of the considered view that murder was committed with brutality in broad daylight. Therefore, the case of the petitioner was rightly held to be covered under Clause 2(a) (xii) of the Policy of the Haryana Government dated 08.08.2000. Therefore, in order to consider for premature release, he has to undergo 14 years and with remission 20 years. There is no illegality in the impugned order dated 13.06.2016 (Annexure P-4).

Accordingly, the present petition is dismissed.

(KULDIP SINGH)
JUDGE

06.12.2018
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Whether speaking/ reasoned:	Yes
Whether Reportable:	No