

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP- 10651 -2018 (O&M)
Date of decision: 17.12.2018

Rajbir Singh

.....Petitioner

versus

State of U.T. Chandigarh and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Abhishek Jindal, Advocate for the petitioner
Mr.Sukant Gupta, Addl. PP U.T., Chandigarh

- 1. Whether Reporters of Local newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Petitioner has invoked the writ jurisdiction of this Court under Articles 226/227 of Constitution of India for quashing the impugned order dated 3.10.2017 (Annexure P1) passed by the Administrator, Union Territory, Chandigarh. Petitioner also seeks mandamus for directing the respondents to consider the case of the petitioner for pre-mature release in the light of the Policy dated 8.7.1991 (Annexure P2).

Petitioner was convicted vide judgment of conviction and order of sentence dated 4.5.2005 passed by learned Additional Sessions Judge, Chandigarh in FIR No.186 dated 21.9.2001 under Sections 302, 342, 201, 34 IPC registered at Police Station Manimajra, Chandigarh and sentenced to undergo life imprisonment. Currently, the petitioner is confined in Model Jail, Burail, Chandigarh. Appeal against the said judgment was dismissed by a Division Bench of this Court. According to

the petitioner, he has undergone total sentence of 22 years 8 months 15 days and with remissions 20 years 11 months and 15 days. His application for pre-mature release was forwarded to District Magistrate, Hisar for police verification. The District Magistrate recommended the pre-mature release of the petitioner vide order dated 26.4.2017 in view of the report of Superintendent, Model Jail, Burail. Petitioner was many times released on parole/furlough and surrendered within time. Then the matter was referred to the learned District and Sessions Judge, Chandigarh for opinion, being the convicting Court. The learned District and Sessions Judge, Chandigarh has reported that the petitioner is an aggressive and unsympathetic person and would be a pain to the society. Therefore, his pre-mature release cannot benefit anybody. Based on the said opinion, pre-mature release of the petitioner has been declined. It is stated that no other case is pending against the petitioner.

In the short reply, filed on behalf of the Additional Inspector General (Prisons)-cum-Superintendent, Model Jail, U.T. Chandigarh, plea is taken that the petitioner along with co-accused, including Babli, killed Ajmer Singh, deceased by giving two-three blows with an iron rod on the head of Ajmer Singh, while he was asleep. The blood splattered on the walls of the room. In order to ensure that Ajmer Singh succumbed to his injuries, three accused dragged him to the bathroom of the house, put his head on the seat of the toilet and washed blood from his head and then wrapped his body in a sheet of cloth. Thereafter, the accused took the body of the deceased in a car after confining one Om Parkash in the room of the said house under threat to liquidate him in case he disclosed the incident to anyone. It is further stated that there were several other cases against the

petitioner, including FIR No.259 dated 31.8.2001, registered at Police Station Sadar Jind under Sections 392 IPC, wherein he has been acquitted. In another FIR No.314 dated 22.7.2001 registered at Police Station Sector 5, Panchkula under Sections 3 and 4 of the Immoral Trafficking (Prevention) Act, 1950, he has been acquitted by learned CJM, Panchkula. It was admitted that the District Magistrate, Hisar has recommended pre-mature release of the convict. However, it is stated that in view of the judgment of the Hon'ble Supreme Court in Union of India vs. V. Sriharan @ Murugun 2016 (1) RCR Criminal 234(SC), opinion of learned Additional Sessions Judge, Chandigarh i.e. the convicting Court, was sought, who opposed the pre-mature release, by passing the remarks, as reproduced above. Hence, his case has been rejected.

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

The policy for the grant of remission dated 8.7.1991 (Annexure P2) shows that the petitioner is covered under clause B, and has to undergo actual sentence of 12 years and with remissions 18 years, as he has committed heinous crime. Custody certificate placed on file by the State dated 31.7.2018 shows that the petitioner has undergone the actual sentence of 16 years 9 months 11 days and with remissions 21 years 10 months and 15 days. Therefore, apparently, he is covered under the policy. The District Magistrate, Hisar, after getting the police verification, recommended the case of the petitioner for premature release. Several letters have been placed on file, which show that the petitioner was released on parole/ furlough several times and reported in time. No jail offence is alleged to have been committed by him while in jail. His parole has been declined only on

account of adverse opinion given by the learned Additional Sessions Judge, Chandigarh.

I am of the view that merely on account of opinion of the learned Additional Sessions Judge, Chandigarh, his case could not be rejected. Opinion of the learned Additional Sessions Judge, Chandigarh was one of the circumstances to be considered and is not binding upon the State to exercise powers under Article 161 of the Constitution of India and Sections 432, 433 and 433A of Cr.P.C. The State was required to consider the report of the District Magistrate and the recommendations of the Superintendent regarding his conduct during jail, in addition to the report of the learned Additional Sessions Judge, Chandigarh and was competent to decide that the opinion of the learned Additional Sessions Judge, Chandigarh is not acceptable in the given circumstances. It is again reiterated that opinion of the learned Additional Sessions Judge, Chandigarh i.e. the convicting Court is only one of the circumstances to be considered and not the sole circumstance to be considered for declining the pre-mature release.

Hence, the impugned order dated 3.10.2017 (Annexure P1) passed by the Administrator, Union Territory, Chandigarh is hereby quashed. Respondents are directed to re-consider the case of the petitioner in the light of the observations made above for pre-mature release.

Necessary orders be passed within four weeks from the date of receipt of a certified copy of this order.

17.12.2018
gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:	Yes
Whether Reportable:	No