

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

**CWP No.10911 of 2018
Date of decision: 05.07.2018**

Asrudin @ Hasrudin

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. S.S. Rana, Advocate,
for the petitioner.

Ms. Sakshi Bakshi, AAG, Punjab.

Ritu Bahri, J.

The petitioner is seeking direction to declare him as juvenile and further to release him as per terms and conditions of Juvenile Justice Act on execution of personal bail bonds. He is further seeking quashing of the order dated 10.03.2016 (Annexure P-5) being illegal and against the Government policy dated 08.07.1991.

Petitioner was arrested in case FIR No.408 dated 05.07.2004, under Sections 302, 201 read with Section 34 IPC, registered at Police Station, Sadar, Patiala. After facing trial, he was convicted and sentenced to undergo rigorous imprisonment for life vide judgment dated 14.12.2006 passed by the Additional Sessions Judge, Patiala. Against the said judgment, he preferred an appeal i.e. CRA-D-196-DB-2007, which was dismissed by a Division Bench of this Court vide judgment dated 03.05.2010. As per medical report dated 22.03.2007 (Annexure P-1) and order dated 24.07.2007 (Annexure P-2) passed by this Court, the petitioner was 19 years of age at the time of his examination on 22.03.2007 by a panel of Doctors

constituted by the Civil Surgeon. Date of occurrence in this case was 05.07.2004. As such, on the date of occurrence, the petitioner around 15-17 years of age. The Juvenile Justice (Care & Protection of Children) Act, 1986 was amended w.e.f. 01.04.2001, where the age of juvenile was increased from 16 years to 18 years. Section 7-A has been added by the Amendment Act, 2006, which provides that if plea of juvenile was not raised before the trial Court, the same can be raised before any Court at any stage even after final disposal of the case, even though the juvenile has ceased to be so. Further, Rule 12 was introduced in the Juvenile Justice (Care & Protection of Children) Rules, 2007, which provides for the procedure to determine the age in every case concerning a child or juvenile or juvenile in conflict with law. As per Rule 12, Sub Rule 3, at first instance, a concerning child or juvenile can be declared a juvenile on the basis of matriculation or equivalent certificate and secondly, date of birth certificate from school, which he attended at the first instance and thirdly, date of birth certificate issued by Corporation Authority or a Panchayat. In the absence of the above provisions, medical opinion can be sought from the duly constituted Medical Board, which will declare the age of juvenile or child. Hon'ble the Supreme Court in 2009 (2) RCR page 878 has held that since the provisions of the Juvenile Justice Act are beneficiary in nature, therefore, a juvenile has to be given the benefit by considering his age on lower side with a margin of one year. It has been further pleaded in the petition that as per Government Instructions dated 08.07.1991 (Annexure P-3), case of a convict (who is convicted for life imprisonment) for grant of premature release can be considered after undergoing 14 years actual sentence and with remission 20 years. In the case of heinous crime, his case would be

considered after undergoing 12 years actual sentence and 18 years with remission. In a simple murder case, his case can be considered after 10 years of actual sentence with remissions 14 years.

It has further been pleaded that the present petitioner was minor at the time of commission of offence. Hence, he is required to undergo 08 years of actual sentence and with remissions 12 years for the purpose of premature release. Hon'ble the Supreme Court in **State of Haryana vs. Jagdish**, 2010 (2) RCR 464 (SC), held that the instructions, which were applicable at the time of conviction are to be applied for grant of premature release to a life convict. However, vide impugned order (Annexure P-5), case of the petitioner for grant of premature release has been rejected. Hence, this petition.

Upon notice, reply along with custody certificate (Annexure R-1) has been filed by the Deputy Superintendent, Central Jail, Patiala. As per custody certificate (Annexure R-1), petitioner has undergone 11 years, 11 months and 09 days and after remission, it comes to 19 years, 11 months and 09 days. While supporting the impugned order (Annexure P-5), it has been asserted by the respondents that the petitioner has undergone requisite period of sentence, but the District Authorities have written in their report that there is no one in his village, who can take his responsibility, therefore, they have not recommended his case for premature release. The report of the District Magistrate has been annexed as Annexure R1/T with the reply/affidavit dated 08.03.2017 filed by the Deputy Superintendent, Central Jail, Patiala. Rejection order dated 04.03.2016 passed by the Principal Secretary, Govt. of Punjab, Home (Jails), Department is annexed as Annexure R2/T, in which, it has been stated that he has undergone 10

years, 05 months and 17 days with remission 18 years, 05 months and 17 days. After agreeing with the report of the District Magistrate and the Senior Superintendent of Police, Patiala, the Governor of Punjab has rejected the case of petitioner for grant of premature release.

In compliance with the order dated 23.05.2017 passed by this Court, additional affidavit dated 14.07.2017 was filed by the Inspector General of Prisons, Punjab. Along with this affidavit, a notification dated 19.06.2017 with regard to the inmates who are unable to furnish surety bonds, has been placed on record as Annexure R-1/T. It has been stated that case of the petitioner for premature release has been recommended and forwarded along with verification report of the District Magistrate to the competent authority. It has been further stated that vide letter dated 19.05.2017 (Annexure R-2), case of the petitioner was to be taken up with the Nepali Authorities. Thereafter, another affidavit dated 04.09.2017 was filed by Sh. Jaspal Singh, PPS, Superintendent, Central Jail, Patiala, on behalf of respondent Nos. 1 to 3, whereby it has been stated that the petitioner has given an application (Annexure R-1/T) that there was no one who could furnish his surety bonds for the purpose of premature release. Thereafter, the District Magistrate, Patiala sent a verification report dated 04.08.2017 (Annexure R-2/T) stating that convict Asrudin @ Hasrudin (petitioner) is a permanent resident of Nepal and was not a permanent resident of village Ajnauda. There was n one in the village Ajnauda to take his responsibility. The said verification report was sent to the Government vide letter dated 18.08.2017. Thereafter, another letter dated 07.08.2017 (Annexure R-3) with regard to the application given by mother of the petitioner, was written to the Department of Home, New Delhi. The

Department of Home, New Delhi was requested to get the verification report from concerned District Magistrate (Nepal) for premature release of the petitioner.

However, as per fresh custody certificate dated 18.09.2017, the petitioner has undergone 13 years, 02 months and 05 days, including remission 21 years, 02 months and 05 days. In compliance with the order dated 18.05.2018 passed by this Court, Member Secretary, Punjab State Legal Services Authority has filed a report, wherein it has been stated as per letter dated 12.04.2018, Department of Home Affairs & Justice, Government of Punjab had initiated the correspondence with the Ministry of External Affairs for deporting of the convict (petitioner) with Nepal Government and the matter was still under consideration.

Learned counsel for the petitioner has placed on record copy of order dated 17.01.2018 passed by Hon'ble the Supreme Court in **Munna vs. The State of Uttar Pradesh, Home Department, Secretary,** Writ Petition (Criminal) No.20/2017, whereby petitioner, who had undergone more than 18 actual years of incarceration and with remission, around 24 years in jail, was directed to be released on bail on execution of a personal bond to the satisfaction of the Superintendent of Jail. He was further directed to report to S.H.O. At his residential place every fortnight.

In the facts of the present case, as per medical report dated 22/26.03.2007 (Annexure P-1), the petitioner was 19 years of age on 22.03.2007. Accordingly, on the date of occurrence i.e. 05.07.2004, he was around 16-17 years old. As per amendment in the Juvenile Justice (Care & Protection of Children), Act, 1986 w.e.f. 01.04.2004, age of juvenile was increased from 16 years to 18 years. Hence, the petitioner has to be treated

as juvenile at the time of his conviction. Further, as per instructions dated 08.07.1991 (Annexure P-3) issued by the Punjab Government, in case of a minor at the time of commission of offence i.e. murder, the petitioner was required to undergo 08 years of actual sentence and with remission 12 years. In the present case, as per custody certificate dated 18.09.2017, the petitioner has already undergone 13 years, 02 months and 05 days of actual sentence and with remission 21 years, 02 months and 05 days.

Reference, at this stage, can be made to a judgment passed by the Delhi High Court in **Salim Ahmed vs. State**, 1997 (4) RCR (Criminal) 436, wherein a convict was friendless, his parents had died during his incarceration in jail and was in poor financial condition. A direction was issued to release him on furnishing of personal bonds of Rs.10,000/- before the District Magistrate, Delhi for keeping good behaviour and maintaining peace during the unexpired portion of his sentence.

In view of the above discussion, the petitioner deserves to be released on execution of personal bond as per judgment passed in **Munna** and **Salim Ahmed's** case (supra).

Resultantly, the petitioner is ordered to be released forthwith on furnishing of personal bond to the tune of Rs.10,000/- to the satisfaction of the Jail Authorities, Patiala for keeping good behaviour and maintaining peace.

Petition stands allowed accordingly.

05.07.2018
ajp

(RITU BAHRI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No