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

CWP No.11550 of 2018

Date of decision: September 28, 2018

Sham Singh @ Bittu

...Petitioner

Versus

The State of U.T. Chandigarh and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Hoshier Singh Jaswal, Advocate,
for the petitioner.

Mr. Arvind Rajotia, Advocate,
for respondent no.1.

Ms. Ashima Mor, Advocate,
for respondents no.2 and 3.

Rakesh Kumar Jain, J. (Oral)

The petitioner has prayed for the issuance of a writ in the nature of *certiorari* for quashing the order dated 11.10.2017 by which his prayer for his premature release has been declined.

In brief, the petitioner was tried in a criminal case registered vide FIR No.377 dated 08.12.1992, under Sections 302/323/34 IPC at Police Station Sector-17, Chandigarh for having committed the murder of Surinder Pal Singh alias Kaka. He was convicted by the Additional Sessions Judge, Chandigarh on 12.12.1996 and sentenced to suffer life imprisonment. The appeal filed by the petitioner against the order of his conviction and sentence has also been dismissed by this Court on 11.01.2006.

The petitioner had applied for his premature release in terms of

the policy dated 08.07.1991 alleging that his case would fall in Clause 1.1(C) of the said policy. The petitioner has admittedly completed 18 years 08 months and 18 days of actual sentence and 25 years and 08 months of total sentence with remissions as on 11.07.2018. However, his application has been rejected by the impugned order on the ground that his case was referred under Section 432 Cr.P.C. to the District and Sessions Judge, Chandigarh, who has opined that the petitioner had committed the murder of Surinder Pal Singh @ Kaka on a trivial issue which shows that he is a man of aggressive nature and further opined that his premature release would not serve any good purpose.

Counsel for the petitioner has submitted that the case of the petitioner has to be considered in terms of the provisions of the policy dated 08.07.1991, in which even if Clause 1.1(A) is applied, the petitioner has completed the requisite sentence and cannot be denied the benefit of premature release only on the basis of the opinion of the Additional District and Sessions Judge, Chandigarh, who has stated that the petitioner is a man of aggressive nature having committed the murder on a trivial issue.

On the other hand, counsel for the respondents have solely relied upon the opinion of the Additional Sessions Judge, Chandigarh dated 29.08.2017 in this regard.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the case of the petitioner would be governed by the policy dated 08.07.1991 in which various categories have been provided under Clause 1.1 of the convicts who have a right to be considered for premature release after the completion of requisite period of actual sentence and total sentence with remissions. The petitioner has claimed

that he is an ordinary convict who has not committed any heinous crime and should be released after completion of 10 years actual and 14 years of total sentence with remissions but his case has been declined under the said policy even after completion of about 19 years of actual sentence and about 26 years of total sentence with remissions, which is the sentence much more than provided in Clause 1.1(A) of the policy dated 08.07.1991, just because of the opinion of the Additional Sessions Judge, Chandigarh.

Since the observations made in the impugned order are contrary to the provisions of the policy dated 08.07.1991, therefore, the present petition is hereby allowed, impugned order dated 11.10.2017 is set aside and the matter is remanded back to respondent no.1 to re-consider the case of the petitioner for the purpose of his premature release in view of the observations made here-in-above and necessary order be passed within a period of one month from the date of receipt of certified copy of this order.

September 28, 2018
vinod*

(Rakesh Kumar Jain)
Judge

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