

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16442-2018 (O&M)
Date of decision:14.12.2018

Harish

.....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Kuldeep Singh

Present: Mr. Himanshu Sharma, Advocate for the petitioner.

Mr. Nishchal Mann, DAG, Haryana.

Kuldeep Singh, J. (Oral)

The petitioner who is undergoing life imprisonment in a murder case has filed this petition under Article 226 of the Constitution of India for quashing the order dated 25.04.2018 (Annexure P-2), passed by Additional Chief Secretary to Government of Haryana, Jails Department, vide which, his premature release case has been declined on the ground that it is covered under Clause 2(a)(xiv) of the Government Policy dated 12.04.2002 (Annexure P-1) and that the petitioner is required to undergo 14 years of actual sentence and 20 years of total sentence.

The allegations against the petitioner are that he had given 10 blows to the deceased and committed his murder. The petitioner was convicted by learned Sessions Judge, Sonapat vide order dated 22.11.2006 in FIR No.125 dated 20.10.2004 under Sections 302/449/34 of IPC, registered at Police Station Gohana and he is in custody since then. Petitioner claims that he has

undergone the actual sentence of 10 years and total sentence of more than 14 years. His case for premature release was put up before Government which took the view that his case is covered under Section 2(a)(xiv) of the Policy dated 12.04.2002 (Annexure P-1).

Learned counsel for the petitioner has not denied that as per prosecution version, the petitioner has given 10 injuries to the deceased.

Under the Policy dated 12.04.2002, if a convict has committed heinous crime, he is required to undergo 14 years of actual sentence including under trial period and total period not less than 20 years. For the purpose of the case, relevant part is Clause (xiv) of the Policy, which is reproduced as under:-

“Any other crime that the state level committee considers to be heinous for reasons to be recorded in writing.”

Therefore, it is discretion of the State Level Committee to consider whether the crime is heinous?

The State in the reply while reiterating that it was a heinous crime, produced the proceedings of the State Level Committee regarding premature release which was decided as under:-

“(iii) The committee is of the opinion that no exhaustive list of heinous offences for those convicts, who must undergo actual sentence of 14 years and total sentence of 20 years before premature release can be prepared. The facts and circumstances of each case are different, hence the discretion must remain with the State Level Committee. However, the Committee recommends that following cases should also be treated as heinous offences:-

<i>Sr. No.</i>	<i>Offence</i>	<i>Reasons</i>
a)	Gang Rape by two or more persons	It is heinous crime as it shatters the physical and mental state of a helpless woman victim
b)	Use of explosive for killing or attacking the public	Use of explosives for killing or attacking people shows extreme brutality and no respect for law
c)	Attacking for killing of judicial officer, Prison Officer, Advocate of Police Officer or Magistrate for discharge of their duties	Attacking the institutions of criminal justice system and letting off such convicts lightly can have demoralizing effect on these institutions
d)	Life sentence under unlawful Activities (Prevention, Act, 1967	Offence against the State
e)	Murder during Communal riots or by naxalities	These convicts shatters the social fabric of the society
f)	Murder during gang war/Running over by vehicle after attacking the deceased and repeated attacking the victim with fire arms or sharp edges weapons	These criminals creates a fear and terror in the mind of society
g)	Murder of witness/complainant in a criminal case/civil suit	These convicts interfere in the Administration of Justice
h)	Kidnapping for Ransom	This is a very serious offence which creates a feeling of uncertainty and in-security in the mind of public

Learned State counsel has argued that the case of the petitioner is covered under Clause (f) which lay down murder during gang war/running over by vehicle after attacking the deceased and repeated attacking the victim with fire arms or sharp edged weapons.

The perusal of the said Clause shows that the murder during gang war or running over vehicle where repeated blows are given is covered in this Clause. It is not a case of gang war or running over vehicle. Therefore, the case of the petitioner is not covered under Clause (f) which is reproduced above. Decision of the State Level Committee shows that under heinous

crime, a convict has to must undergo 14 years of actual imprisonment and 20 years total sentence before their case for premature release can be prepared.

The facts and circumstances of this case are different and discretion must remain with the State Level Committee. In the circumstances, the discretion is still with the State Level Committee considering the guidelines the decision above noted. Let the State Level Committee reconsider the case of the petitioner after going through the judgment of the trial Court and recording specific reasons, if any, as to why the case of the petitioner falls under the category of heinous crime. The order dated 25.04.2018 (Annexure P-2), passed by Additional Chief Secretary to Government of Haryana, Jails Department, is accordingly quashed with the above noted direction. Let the Committee take fresh decision within two months from the date of receipt of certified copy of this order.

(KULDIP SINGH)
JUDGE

14.12.2018
anju rani

Whether speaking/ reasoned:	Yes
Whether Reportable:	No