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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
10/11/2018 10:46
I attest to the accuracy and
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CWP-19130-2018 (O/M)
Date of decision : 3.12.2018

Pawan Kumar

..... Petitioner (s)

Versus

State of Haryana and others

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. V.K. Jindal, Advocate,
for petitioner.

Mr. Amrik Narwal, DAG Haryana.

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KULDIP SINGH, J.

Petitioner was convicted in case FIR No. 236, dated 22.5.2002, registered under Section 302 IPC read with Section 34 IPC, at Police Station Jhajjar, vide judgment of conviction dated 20.2.2006 and order of sentence dated 27.2.2006, passed by learned Additional Sessions Judge, Jhajjar. In appeal, co accused Rajan was acquitted. However, appeal of present petitioner was dismissed. According to petitioner, he has undergone actual sentence of 11 years, 5 months, 2 days and with remissions 14 years, 4 months, 1 day, at the time of filing of petition.

The State of Haryana has framed a policy dated 12.4.2002 (Annexure-P-3) for premature release of convicts. The case of petitioner for premature release was considered and declined, vide order dated 25.4.2018, endorsed on 30.4.2018, (Annexure-P-4), passed by Additional Chief Secretary to Government Haryana, Jails Department, holding that his case is covered under Clauses 2 (a) (xi) and 2 (a) (xii) of the policy framed by State Government dated 12.4.2002 (Annexure-P-3). Petitioner claim that said order is illegal and should be set aside.

In written statement, State has taken stand that petitioner is not

a law abiding person and remained involved in 6 other FIRs, which are as under :-

- i) FIR No. 423 dated 20.11.2016, U/s 307 IPC, P.S. Jhajjar-Convicted and sentenced to undergo 5 years imprisonment on 15.5.2012.
- ii) FIR No. 450 dated 9.12.2006, U/s 8/9 Parole Act, P.S. Jhajjar-Convicted and sentenced to undergo 1 year imprisonment on 21.5.2012.
- iii) FIR No. 875/2006, U/s 302/201/342/148/149/120-B IPC and 25/54/59 of Arms Act, P.S. Sadar Gurugram-Acquitted on 29.1.2013.
- iv) FIR No. 982./2006, U/s 307/120-B IPC and 25/54/59 of Arms Act, P.S. Jhajjar-Acquitted on 10.4.2014.
- v) FIR No. 193 dated 18.4.2010, U/s 174-A IPC, P.S. Jhajjar-Convicted and sentenced already undergone on 1.9.2010.
- vi) FIR No. 539 dated 25.9.2012, U/s 174-A IPC, P.S. Jhajjar-Convicted and sentenced already undergone on 23.4.2013.'

The petitioner had also absconded from parole for a long period of 3 years, 7 months, 17 days. During his absent period, 5 criminal cases were registered against him. Further stand was taken that in Maru Ram Versus Union of India, AIR 1980 SC 2147, the Supreme Court of India has taken the view that a sentence of imprisonment for life is an imprisonment for whole of remaining period of natural life of convict. Therefore, petitioner has no right to be prematurely released. His case will be considered as per policy of State Government. Since his case is covered under Clauses 2 (a) (xi) and 2 (a) (xii) of said policy of State Government, he was required to undergo actual sentence of 14 years and with remissions 20 years. Therefore, he is not entitled to premature release

at this stage.

As per State reply, till date of filing of reply, petitioner has undergone actual custody of 11 years, 7 months, 2 days and total sentence of 14 years, 5 months, 16 days. Therefore, his premature release case was rightly rejected.

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

Perusal of impugned order dated 25/30.4.2018 (Annexure-P-4) shows that State does not deny that petitioner has undergone actual sentence of 11 years, 1 month, 26 days and with remissions, 14 years (as on 29.3.2018). The Government has taken view that case of petitioner is covered under Clause 2 (a) (xi) as well as Clause 2 (a) (xii) of said policy of State Government dated 12.4.2002 (Annexure-P-3) as he has committed many crimes of Parole Act, Arms Act, attempt to murder, murder during conviction and his conduct in jail also remained persistently bad. Convict also overstayed parole of 3 years, 7 months, 17 days, during which period 6 FIRs were registered against him in between year 2006 to 2014. Therefore, he is required to undergo actual sentence of 14 years, with remissions 20 years.

Perusal of policy of State Government dated 12.4.2002 (Annexure-P-3) shows that Clauses 2 (a) (xi) and 2 (a) (xii), relied upon by State to decline premature, are as under :-

'2 (a) (i) to (x)	xxxxx	xxxxx	xxxxx
2 (a) (xi)	Persistent bad conduct in the prison.		
2 (a) (xii)	Convicts who cannot for some definite reasons be prematurely released without danger to public safety.'		

In case petitioner is covered under said clauses, he is required to actual sentence of 14 years and with remissions 20 years.

Reply of State shows that in case FIR No. 423, dated

20.11.2006, registered under Section 307 at P.S. Jhajjar, petitioner was convicted and sentenced to undergo rigorous imprisonment for 5 years. Petitioner was also convicted and sentenced to undergo one year rigorous imprisonment in FIR No. 450, dated 9.12.2006, registered under Sections 8 and 9 of Parole Act. In first two cases, petitioner has been convicted, in next two cases, he has been acquitted and in last two cases, petitioner has been sentenced to period already undergone by him. In last two FIRs, these are registered under Section 174-A IPC, for becoming proclaimed offender during trial.

I am of view that for violating parole period and becoming abscond, petitioner has been convicted as required under the law. Therefore, he cannot be punished twice for same offence. In FIR No. 423, dated 20.11.2006, i.e. after present FIR, he was sentenced to undergo rigorous imprisonment for 5 years under Section 307 IPC. It goes to show that though conduct of petitioner in jumping parole was a bad, but it was not a persistent bad conduct. Therefore, Clause 2 (a) (xi) of policy of State Government dated 12.4.2002 (Annexure-P-3) does not apply. Regarding Clause 2 (a) (xii) of policy of State Government dated 12.4.2002 (Annexure-P-3), no reason has been given that if he is prematurely release, there will be danger to public safety.

As already noticed above, except FIR under Section 307 IPC, in which he has been convicted, other cases are under Parole Act and for becoming proclaimed offender. However, in 2 of cases under Sections 307 and 302 IPC, he has been acquitted. Therefore, these cannot be used against him.

In view of matter, it cannot be said that if petitioner is

prematurely released, he will be danger to public safety. It being so,
impugned order dated 25/30.4.2018 (Annexure-P-4), passed by Additional
Chief Secretary to Government Haryana, Jails Department, is hereby set
aside. State is directed to reconsider case of petitioner in the light of above
observations and pass fresh orders, within six weeks, from the date of
receipt of certified copy of this order. Petition is thus allowed.

(KULDIP SINGH)
JUDGE

3.12.2018
sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No