

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

CRM-M-22830-2018 (O&M)

Date of decision : 18.12.2018

Jaspal Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vishal Nehra, Advocate for the petitioner.

Ms. Sunint Kaur, AAG, Punjab.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Petitioner has invoked the writ jurisdiction of this Court under Article 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the impugned order dated 9.10.2017 (Annexure P-6), passed by Government of Punjab whereby the case of premature release of the petitioner has been kept pending on the ground that investigation was done by the Central Agency and the consent of Union of India is necessary before granting remission to the convict. Further, a mandamus is sought for release the petitioner with immediate effect as he has already undergone more than 14 years 04 months of actual sentence and total sentence of 17 years 02 months with remission.

Heard.

It comes out that the petitioner was convicted under Sections 120B, 364/34, 302/34 and 201 of the Indian Penal Code and awarded maximum sentence for life vide judgment of conviction and order of

sentence dated 18.11.2005, passed by learned Additional Sessions Judge, Patiala. On the allegations of killing of Jaswant Singh Khalra, General Secretary, Human Rights Wing of Shiromani Akali Dal. The case was investigated by Central Bureau of Investigation. Petitioner is now confined in Open Air Jail, Nabha.

Learned counsel for the petitioner contends that petitioner was arrested on 21.11.1996 and had remained in judicial custody upto 4.6.1997 during the trial. He was again confined in jail w.e.f. 18.11.2005 and since then he is in judicial custody. His conduct in jail is good, therefore, his case was wrongly not considered.

State in its reply has taken the stand that the appeal against conviction of the petitioner was dismissed by this Court as well as by the Apex Court. Case of the petitioner for premature release was sent to Union Government of India by the State Government for consent vide letter No. 1/133/17-2G7//1080871/1 dated 9.10.2017. But Government of India has not given consent. Vide letter No. 15/26/2019-Judl-II dated 11.6.2018. Central Government has categorically stated that it is not a fit case for according concurrence for the proposal of premature release under Section 435 of the Code of Criminal Procedure. After agreeing to the recommendation of the Central Government, State Government has considered the case of the petitioner but the same was declined vide order dated 30.8.2018. A true translated copy of the order of the Governor dated 30.8.2018 and the letter received from the Central Government dated 19.6.2018 are attached with the reply as Annexure R-2/T and Annexure R-4 respectively.

Admittedly, case of the petitioner was investigated by CBI. It is also admitted case of the respondents that case of the petitioner was sent to the Central Government for consent. As per the custody certificate (Annexure R-3), petitioner has undergone total sentence of 16 years 09 months and 19 days without remission and 13 years 11 months and 20 days of total sentence. The case of the petitioner for premature release has been declined vide order dated 30.8.2018 (Annexure R-2/T), passed by Additional Secretary Home, Punjab Government, Department of Home Affairs, Justice and Jails on the ground that Government of India did not recommend the case of the petitioner for early release vide letter dated 11.6.2018.

Admittedly in case of the petitioner, the consultation of the Central Government was required under Section 435 of the Code of Criminal Procedure which is reproduced as under: -

435. State Government to act after consultation with Central Government in certain cases.

(1) The powers conferred by sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence is for an offence-

(a) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, or

(b) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(c) which was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, shall not be exercised by the State Government except after consultation with the Central Government.

(2) No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends."

Perusal of the said Section shows that before granting any remission or commuting of the sentence, investigated by Delhi Special Police Establishment, State Government shall not exercise the powers except after consultation with the Central Government. The word used in Section 435 of the Criminal Procedure Code is the '*consultation*' and not the '*consent*'. The State Government has produced the letter dated 19.6.2018 (Annexure R-4) issued by Government of India, Ministry of Home Affairs, relevant extract are as under: -

Subject: - Premature release case of life convict Jaspal Singh s/o Satpal Singh lodged in Open Jail Nabha, Punjab, regarding.

Sir,

I am directed to refer to the Punjab Government letter No. 1/133/17-2H7/080871/1 dated 9.10.2017 on the above subject and to say that having regard to all facts and material placed on record by the Government of Punjab and the recommendation of the CBI, the Central Government does not consider it to be a fit case for according '**concurrence**' to the proposal of the Govt. of Punjab under Section 435 of the Cr. P.C.

2. This issues with the approval of the competent authority."

The Governor of Punjab after considering the said letter dated 11.6.2018 has ordered as under in the order dated 30.8.2018 (Annexure R-2/7): -

".....However Department of Home Affairs, Government of India, New Delhi, after considering whole facts, recommendation of CBI did not find the case of the convict to release him early and reject the same vide letter No. 15/26/2018-Judl-II dated 11.6.2018 and did not give '**consent**' for early release of convict."

It goes to show that the Government of Punjab considered that *consent* of the Central Government is required whereas as per Section 435 of the Code of Criminal Procedure only the *consultation* is required. There is a marked difference between the '*consent*' and the '*consultation*'. Whereas the *consent* is binding on the State Government, however, the *consultation* is a *consultation* and the State Government may or may not follow the same. Matter was considered by Single Bench of this Court, wherein similar case investigated by CBI, the Court took the view that the consultation of the Central Government is required.

In view the matter, Annexure R-2/7 passed by Governor of Punjab dated 30.8.2018 is quashed. State Government is directed to again initiate the process and consider the case of the petitioner for premature release after consultation with the Central Government (*not consent*) and after considering the entirety of the circumstances pass the fresh order.

State Government shall also consider the fact that the petitioner is confined in Open Air Jail Nabha and the petitioner claims that one year special remission is granted to the prisoners confined in Open Air Jail Nabha.

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

It is further directed that if the order is not passed within four weeks from the date of receipt of certified copy of this order, State of Punjab shall temporarily release the petitioner on parole for the period the case of the petitioner for premature release is not finally disposed of by passing a speaking order, on furnishing the surety bonds to the the satisfaction of the District Magistrate concerned.

Disposed of.

(KULDIP SINGH)
JUDGE

18.12.2018
preeti

Whether speaking / reasoned	Yes
Whether Reportable:	No