

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

**CWP-23660-2018 (O&M)
Date of decision:06.12.2018**

Vijay Kumar

.....Petitioner

versus

State of Punjab and others

....Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. Sanjeev Manhas, Advocate for the petitioner.

Ms. Sunint Kaur, AAG, Punjab.

Kuldip Singh, J. (Oral)

Reply by way of short affidavit of Shamsheer Singh Boparai, Superintendent, Central Jail, Ludhiana on behalf of the State of Punjab along with Punjab Government Pre-mature Release Policy (Annexure R-1), has been filed in Court today is taken on record.

Petitioner-Vijay Kumar was convicted under Sections 302/307/396/148 & 149 IPC and Section 25 of Arms Act in FIR No.142 dated 28.02.2002, registered at Police Station Garhshankar, District Hoshiarpur and sentenced to undergo rigorous imprisonment for life. Under Sections 302 & 396 IPC, both the sentences were directed to run concurrent.

The petitioner claims that he should be prematurely release and that order dated 05.12.2013 (Annexure P-3), passed by Additional Secretary Home, Department of Home Affairs & Justice, Home-7, Branch, whereby his premature release was declined, is illegal and should be quashed. The Co-ordinate Bench of this Court vide order dated 01.09.2015 allowed the petition

after quashing of order dated 05.12.2013 and the petitioner was ordered to be set at liberty forthwith.

State of Punjab approached the Supreme Court of India which allowed the appeal vide order dated 06.07.2018, passed in Criminal Appeal-833-2018 titled as 'The State of Punjab and others versus Vijay Kumar' and set aside the order dated 01.09.2015, passed by this Court and remanded the case to this Court for re-consideration in accordance with law, on the ground that order has been passed without giving any reason.

The State in the reply has taken the stand that the petitioner has undergone the actual sentence of 11 years, 02 months & 27 days. After the policy dated 08.07.1991, a fresh policy dated 04.04.2013 has been promulgated, wherein the petitioner who has committed heinous crime is required to undergo 12 years of actual imprisonment which the present petitioner has not completed.

It is further stated that the petitioner has undergone sentence of 11 years, 2 months & 27 days as on 29.08.2014. Therefore the case of the petitioner was initiated by respondent vide letter No.PRC/9065 dated 05.08.2013 which has been rejected by the Government vide letter No.1/180/2013-2G-7/1904 dated 20.12.2013 (Annexure R/T-1). State has maintained that the petitioner has not completed requisite sentence that was to be considered.

I have heard learned counsel for the parties and carefully gone through the record.

Admittedly, in this case, the petitioner was convicted in the year 2005 and at that time, Policy dated 08.07.1991 was applicable. As per the said

policy, the case of the petitioner falls under para No. (1) Clause B being the heinous crime. Therefore, he was required to undergo actual sentence of 12 years and with remission 18 years.

Learned counsel for the petitioner has fairly conceded that at the time of filing of the petition, petitioner had not completed the said sentence but now during pendency of the present petition, he has completed the requisite sentence. In any case, it is discretion of Government to see whether after completion of the said requisite period, he is entitled to be prematurely released or not.

In the circumstances, order is not illegal. The petitioner had not completed the said period as on 05.12.2013. Therefore, order dated 05.12.2013 (Annexure P-3), passed by Additional Secretary Home, Government of Punjab, Department of Home Affairs & Justice, Home 7-Branch cannot be called illegal and is maintained. However, the petition is disposed of directing the State of Punjab to re-consider the case of the petitioner in the light of the fact that now he has completed 12 years of actual imprisonment and 18 years with remission and pass a fresh order on the same within two months.

At this stage, learned counsel for the petitioner states that as per his information, his premature release case has been approved by the government of Punjab. If, it is so, the State shall grant premature release to the petitioner on the basis of the said order.

(KULDIP SINGH)
JUDGE

06.12.2018

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Whether speaking/ reasoned:

Yes

Whether Reportable:

No