

205 (2 Cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No 5780 of 2018

Date of Decision: 07.09.2018

YASH PAL

... Petitioner

VS.

STATE OF HARYANA AND OTHERS

...Respondents

CWP No 5781 of 2018

SHAMSHER SINGH

... Petitioner

VS.

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. V.K. Jindal, Advocate,
for the petitioner(s) in both the petitions.

Mr. Saurabh Mohunta, DAG, Haryana.

RAKESH KUMAR JAIN (ORAL)

This order shall dispose of two connected writ petitions bearing CWP No. 5780 of 2018 titled as Yash Pal Vs. State of Haryana and Others and CWP No. 5781 of 2018 titled as Shamsher Singh Vs. State of Haryana and Others as both are directed against the order dated 06.06.2016 and 13.06.2016 passed by respondent No. 1 by which applications of the petitioners for their premature release have been ordered to be re-considered after completion of 14 years of actual sentence and 20 years of sentence after remissions as per Clause 2 (a) (xii) of the Policy dated 08.08.2000 (herein after referred to as 'the Policy').

In brief, both the petitioners alongwith seven others were implicated in a case registered vide FIR No. 314 dated 23.08.1998 under Sections 148, 302, 149 of the Indian Penal Code at Police Station Ladwa, District Kurukshetra. The trial Court acquitted three out of the nine accused

and convicted Dilawar Singh, Yash Pal, Balkar Singh, Ranbir Singh, Shamsher Singh, Charan Singh vide its order dated 05.10.2000 and sentenced them to suffer life imprisonment. The said orders of conviction and sentence were challenged by the petitioners alongwith other co-accused by way of Criminal Appeal No. 561-DB of 2000. In the appeal, Balkar Singh, Ranbir Singh and Charan Singh were acquitted but the appeal filed by Dilawar Singh, Yash Pal and Shamsher Singh was dismissed on 13.10.2009. The petitioners alongwith Dilawar Singh had filed the criminal appeal before the Hon'ble Supreme Court which was dismissed on 16.09.2014 and the said judgement is reported as 2014 (10) JT 477 Dilawar Singh and Others Vs. State of Haryana and Others. The petitioners had applied for their premature release in terms of the Policy after completion of 10 years' actual sentence and 14 years' sentence with remissions but the State Level Committee has recommended that the premature release case of the petitioners may be considered under Clause 2 (a) (xii) of the Policy because the petitioners had shown brutality in commission of crime of committing murder of one Narinder Singh by giving 18 injuries; 13 incised and 4 lacerated wounds and also one injury to the brain of the deceased with swords, gandasi, hockey sticks and cutter blows and also cut his right ring finger at middle inter-phalangeal joint. The said recommendations have been accepted by the State-respondent No. 1 on the ground that the offence committed by the petitioners falls under the definition of heinous crimes and would come under Para 2 (a) instead of Para 2 (b) of the Policy.

Learned counsel for the petitioners has submitted that the respondents have been shifting their stand as earlier when the petitioners had filed the Criminal Writ Petition No. 155 of 2016 titled as Yash Pal Vs. State of Haryana and others for seeking premature release, the respondents had filed

reply in which it was averred that *“the premature release case of the petitioner falls under Para 2 (b) of the Policy dated 08.08.2000, which was prevalent at the time of their conviction. As per this para, petitioner is required to undergo 10 years of actual sentence including under trial period and 14 years of total sentence including remissions after deduction of parole period. Petitioner has completed his requisite sentence as per policy and his case is to be considered by the State Level Committee of his premature release.”*

It is submitted that the case set up by the respondents in the said Criminal Writ Petition was that the matter has to be considered by the State Level Committee which is to be held shortly as per the convenience of the Chief Minister being its Chairman. The said Criminal Writ Petition was disposed of on 05.05.2016 with the following observations that *“Accordingly, the respondents are directed to convene a meeting of State Level Committee within one month from today and to consider the case of the petitioner for premature release in terms of the policy dated 08.08.2000.”*

Thereafter, the State Level Committee held a meeting on 25.05.2016 in which the case of the petitioners for their premature release was considered and it had recommended to the Government that the case of the petitioners would fall under Para 2 (a) (xii) of the Policy on the ground that that the petitioners had caused 18 injuries including 13 incised and 4 lacerated injuries and one injury to brain of the deceased and also cut his right finger.

Learned counsel for the petitioners has submitted that the case of the petitioners would not fall under Para 2 (a) (xii) because the petitioners had not exhibited brutality by cutting the body into pieces.

Para 2 (a) (xii) of the Policy 08.08.2000 reads under:-

“Murder exhibiting brutality such as cutting the body into pieces or burning/dragging the body as evident from judgement of the Court.”

Learned counsel for the petitioner(s) has further submitted that in every murder, the element of brutality is always there but the State Government itself has chosen the extent of brutality in a murder in a different way for the purpose of considering the case of premature release of the petitioners. He has referred to the judgements of this Court rendered in the cases of Gurbax Singh Vs. State of Haryana passed in CRM-M-1298-1994 decided on 08.07.1994; Harpal Singh Vs. State of Haryana and another passed in CRWP No. 1419 of 2010 decided on 06.01.2011, Surender Vs. State of Haryana and others passed in CRWP No. 1055 of 2016 decided on 23.12.2016 and Krishan Vs. State of Haryana passed in CRWP No. 1541 of 2016 decided on 21.08.2017.

It is submitted that mere fact that there were 18 injuries on the body of the deceased and his ring finger was amputated would not make it a case to fall under Clause 2 (a) (xii) to hold it a heinous crime for the purpose of declining the benefit of premature release, as allowed under the Policy to the adult life convicts, who have been imprisoned for life but whose cases are not governed under Para 2 (a) and have completed 10 years' actual sentence and 14 years' sentence after remissions.

On the other hand, learned State counsel has submitted that the number of injuries caused to deceased Narinder Singh by the accused including the present petitioners who were nine in number, were with the sharp edged weapons, including the injury on the brain of the deceased and chopping off

decision of this Court rendered in the case of Avtar Singh Vs. State of Punjab and others; 2004(1) RCR (Criminal) 661.

I have heard learned counsel for the parties and perused the record with their able assistance.

There is no dispute about the existence of the Policy dated 08.08.2000. The said policy deals with the premature release cases of the life convicts. Para 2 (a) of the policy provides that convicts whose death sentence has been commuted to life, imprisonment and convicts, who have been imprisoned for life if commits heinous crime then they have to complete 14 years' actual sentence and 20 years' sentence including remissions but as per Para 2 (b) of the Policy, in case of conviction of adult life convict whose case is not covered by Para 2 (a) and who has committed crime which is not considered heinous, has to suffer 10 years' actual sentence and 14 years' sentence after remissions.

Now, the question is as to whether the case of petitioner(s) would fall within the parameters of Para 2 (a) (xii) of the Policy or not?

No doubt that there were nine accused tried by the trial Court but three were acquitted by the trial Court and another three were acquitted by the first appellate Court. It is also not disputed that the deceased Narinder Singh had received 18 injuries including 13 incised and 4 lacerated, one injury to the brain and had also lost one ring finger. However, the case of the petitioners would still not fall within the parameters of Clause 2 (a) (xii) holding their crime to be heinous because Clause 2 (a) (xii) provides that the murder exhibiting brutality, such as cutting the body into pieces or burning/dragging the body, which is conspicuous by its absence in the present case, as evident from the judgments of the learned Courts who have dealt with the trial and the

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case whereas the judgement relied upon by the respondents is altogether on different facts because in that case, the accused had chopped off the head of his wife which was considered as a ghastly murder.

Thus, in view of the aforesaid, present petitions are found to be meritorious and the same are allowed. The impugned order dated 06.06.2018 and 13.06.2018 passed in both the cases are hereby set aside. The cases are remanded back to the authorities to re-examine the case of the petitioners in terms of Para 2 (b) of the policy and decide the same as expeditiously as possible.

07.09.2018

Ess Kay

**[RAKESH KUMAR JAIN]
JUDGE**

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No