

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.6722 of 2018

Date of decision: September 27, 2018

Devender and another

...Petitioners

Versus

State of Haryana and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr.Vijay K.Jindal, Advocate for the petitioners.
Mr.Saurabh Mohunta, DAG Haryana.

Rakesh Kumar Jain, J. (Oral)

This petition is filed for the issuance of a writ in the nature of mandamus for seeking direction to the respondents to consider the case of the petitioner for their premature release in terms of the Policy dated 12.4.2002 and instructions dated 26.8.2003 as per which the case of the petitioners has matured for grant of premature release after completion of 10 years actual sentence and 14 years total sentence with remissions.

In brief, twelve persons were tried in a case registered vide FIR No.374 dated 1.10.2001 under Sections 148, 149, 302, 307 and 120-B IPC and Section 25 of Arms Act at P.S.Sadar Palwal. In the said case, three persons were murdered namely, Ganga Lal, Kirpa Ram and Tejpal. The trial Judge acquitted seven accused but convicted the other five accused persons, namely, (i) Rati Ram (ii) Brij Mohan (iii) Devender (iv) Mam Chand (v) Ombir. The trial Judge held that Tejpal had succumbed to the injuries caused by both the petitioners whereas the other two deceased Ganga Lal and Kirpa Ram died because of the injuries caused by other three accused persons. However, all the

five accused persons were convicted vide order dated 24.1.2007 under Sections 148, 149, 307, 302 IPC and vide order dated 30.1.2007, they were sentenced in the following manner:

“Hence all the five convicts were sentenced to undergo rigorous imprisonment for three years and to pay fine of ₹500/- each for commission of offence punishable under Section 148 IPC read with Section 149 IPC. In default of payment of fine to undergo rigorous imprisonment for three months. They are also sentenced to undergo rigorous imprisonment for ten years and to pay fine of ₹1000/- each for commission of offence punishable under 307 IPC read with section 149 IPC. In default of payment of fine to undergo rigorous imprisonment of one year. All the five accused/convicts are also sentenced undergo rigorous imprisonment for life and to pay fine of Rs.2000/- each for commission of offence punishable under section 302 IPC read with section 149 of the Indian Penal Code.

As many as four appeals were filed against the order of conviction and sentence of the trial Court including the petitioners Devender and Mam Chand who had filed Criminal Appeal No.D-156-DB of 2007 and Criminal Appeal No.D-247-DB of 2007. All the four appeals were heard together and were dismissed by this Court on 9.1.2013.

The petitioners are presently lodged in District Jail Faridabad.

Counsel for the petitioners have submitted that the petitioners are entitled for their premature release in terms of the Policy dated 12.4.2002 as their case would fall under Clause 2(b) of the said Policy. It is submitted that the petitioners have already completed 10 years actual sentence and 14 years total sentence with remissions and they deserve to be prematurely released. He has further submitted that the respondents have issued another instructions on 26.8.2003 in which it was provided that if a convict is sentenced for life for

committing the murder of more than two persons then it would be covered by

para 2(b) of the said Policy as the High Court has struck down paragraph 2(aa)(iii) of the said instructions. Counsel for the petitioners, however, has fairly submitted that the instructions dated 26.8.2003 was withdrawn by the respondents on 30.8.2017. It is also submitted that the case of the petitioners for premature release was not being considered, therefore, the petitioners, who had applied under the Right to Information Act, 2005 were supplied the information on 4.10.2017 to the effect that “the Premature release of life convict Mam Chand s/o Yadu Ram and Devender s/o Brij Pal was received from the Superintendent District Jail, Faridabad on completion of 10 years, 11 months and 18 days actual sentence and 13 years, 10 months and 20 days total sentence and 10 years 10 months and 21 days total sentence respectively, while these cases were to be considered after completion of 20 years actual sentence and 25 years total sentence as per para 2(aa)(iii) of the Policy dated 12.4.2002 as both the convicts had committed murder of more than 2 persons. It is submitted that the petitioners then came to know the reason for not being considered their case for premature release in terms of Clause 2(b) of the Policy dated 12.4.2002.

Learned counsel for the petitioners has vehemently argued that firstly, the case of the petitioners would not fall within the definition of heinous crime as provided in Clause 2(aa)(iii) of the Policy dated 12.4.2002. As per the findings recorded by the trial Judge, they have committed only one murder of Tejpal and rest of the two murders were committed by the other persons namely, Rati Ram, Brij Mohan and Ombir. It is submitted that the Clause 2(aa)(iii) of the Policy provides that convict whose death sentence has been commuted to life imprisonment and convicts who have been imprisoned for life having committed a heinous crime which are further provided from Clause

completion of 20 years actual sentence and 25 years total sentence with remissions. It is submitted that the murder of two persons is committed by other three accused and not by the petitioners. He has further submitted that even if it is presumed that the petitioner had committed the murder of two persons, the said Clause 2(aa)(iii) of the Policy was struck down vide instructions dated 26.8.2003. It is also submitted that had the case of the petitioners been considered in time before the instructions dated 26.8.2003 was withdrawn on 30.8.2017 then the petitioners would have been prematurely released like other similarly situated convicts.

In reply, State counsel has submitted that the case of the petitioners would fall under the Clause 2(aa)(iii) of the Policy as they have been convicted and sentenced under Section 302 read with Section 149 IPC. It is submitted that the murder of three persons was committed in the same incident in which there were twelve persons in all. It is further submitted that it is immaterial where the petitioners had inflicted any injuries to the other two persons namely, Ganga Lal and Kirpa Ram, who had also died in the same incident. In this regard, he has relied upon a decision of the Supreme Court in the case of ***Lalji and others Vs. State of U.P. 1989 AIR (SC) 754***. In regard to the instructions dated 26.8.2003, it is submitted that these instructions were withdrawn on 30.8.2017 and at the time when these instructions were invoked the case of the petitioners was not ripe for being considered for their premature release. Even otherwise, it is submitted that at this stage when the petitioners were asking for premature release, the policy dated 26.8.2003 is not available as it has already been withdrawn on 30.8.2017.

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

There is no doubt that in the occurrence dated 1.10.2001, as many

as 12 persons had participated from the side of the accused for the purpose of inflicting injuries upon the persons of the side of the victims in which three persons lost their life. The petitioners had allegedly caused the death of one person whereas the death of other two persons was because of three other persons who are not before this Court as the petitioners. But the fact remains that all the five persons, who have been ultimately convicted and sentenced by the trial Court, were part of the unlawful assembly and were prosecuted in terms of Sections 148 and 149 IPC and were convicted and sentenced under Sections 148, 302, 307, 120-B read with Section 149 IPC for having committed murder jointly. In this regard, decision of the Supreme Court in ***Lalji and others' case (supra)*** is required to be referred to in which Supreme Court has held that “once the case of a person falls within the ingredients of the section the question that he did nothing with his own hands would be immaterial. He cannot put forward the defence that he did not with his own hands commit the offence in prosecution of the common object of the unlawful assembly or such as the members of the assembly knew to be likely to be committed in prosecution of that object. Everyone must be taken to have intended the probable and natural results of the combination of the acts in which he joined. It is not necessary that all the persons forming an unlawful assembly must do some overt act. When the accused persons assembled together, armed with *lathis* and were parties to the assault on the complainant party, the prosecution is not obliged to prove which specific overt act was done by which of the accused. This section makes a member of the unlawful assembly responsible as a principal for the acts of each, and all, merely because he is a member of an unlawful assembly.” In the present case also, the petitioners have been found to be part of the unlawful assembly and were

cannot take advantage that they had killed only one person and have not committed heinous crime to take the benefit of Section 2(aa)(iii) of the Policy. Thus, I am of the considered opinion that the petitioners have been convicted and sentenced under Sections 302/149 IPC, therefore, they cannot be held to have not committed the murder of only one person to whom they had caused injuries. Insofar as the next argument is concerned, the clause 2(aa)(iii) of the Policy was allegedly struck down and instructions were issued on 26.8.2003. At that time, cases of the petitioners were not ripe for the purpose of premature release and the said Instructions were ultimately withdrawn on 30.8.2017, therefore, if the case of the petitioners is considered today there is no such Instructions dated 26.8.2003 for the purpose of giving them the benefit of para 2 (b) of the Policy.

No other argument has been raised.

In view of the aforesaid facts and circumstances, I do not find any merit in this petition and the same is hereby dismissed with no order as to costs.

September 27, 2018
Meenu

(Rakesh Kumar Jain)
Judge

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No