

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.9822 of 2018
Date of Decision: 07.09.2018

Shankar @ Yaseen

..... Petitioner

Vs.

The State of Haryana and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: - Mr.Hoshiar Singh Jaswal, Advocate,
for the petitioner.

Ms.Safia Gupta, AAG, Haryana.

RAKESH KUMAR JAIN, J.

The petitioner has prayed for a writ in the nature of certiorari for quashing the order dated 17.8.2017 passed by respondent No.1 by which his application for premature release has been declined.

In brief, the petitioner is presently lodged in District Jail, Gurugram and is undergoing life imprisonment. The allegations against the petitioner are that he along with three other persons had trespassed the house of Ashok Kumar Chitkara, committed his murder by iron rods, danda and hammers blows and also injured his wife Geeta Devi, his son Ishan aged about 13-14 years and his neighbourer Hari Dutt on 16.3.2000. Ashok Kumar Chitkara died at the spot on 16.3.2000. All the accused robbed the gold chain, ear-rings and bangles of Geeta Devi and also took away cash and ornaments lying in the Almirah. In this regard, FIR No.141 dated 16.3.2000 under Sections 395/396/397 of the Indian Penal Code, 1860 [for short 'the IPC'] was registered at P.S. City Sonapat against them and they were

convicted and sentenced life imprisonment by the Additional Sessions Judge, Sonapat on 12.4.2001.

Besides this, according to the respondents, there were 11 other cases against the petitioner, the detail of which is given in para No.2 of the reply, which may be read as under:-

- “1) *FIR No.116/95 U/s 460 IPC, PS Sadar Sonapat-Acquitted on 29.05.2003.*
- 2) *FIR No.77/98 U/s 396/307/302/34 IPC, PS Anand Vihar, Delhi- Acquitted on 18.11.2012.*
- 3) *FIR No.377/98 U/s 460 IPC, PS Ladwa – Acquitted on 16.07.2003.*
- 4) *FIR No.426/1998, U/s 458/380 IPC, PS Jagadhari – Sentence for 07 years RI & Fine of Rs.1000/- by the Ld. Court of Addl. Sessions Judge, Jagadhari on 12.10.2004- Released on bail on 27.08.2010.*
- 5) *FIR No.889/98 U/s 459/460 IPC, PS, City Karnal- Undergone on 22.01.2004.*
- 6) *FIR No.133/99 U/s 460, PS Sadar Yamuna Nagar-Acquitted on 06.04.2005.*
- 7) *FIR No.456/99 U/s 458/460/380 IPC, PS Sadar Ballabhgarh-Acquitted on 20.08.2011.*
- 8) *FIR No.61/2000 U/s 302, 201 IPC, PS Sadar Sonapat-Acquitted on 06.05.2003.*
- 9) *FIR No.10/2000 U/s 394 IPC, PS Mirjapur, Saharanpur (UP) – Discharged.*
- 10) *FIR No.52/2000 U/s 392 IPC, PS Garh Mukteshwar (UP-Discharged) on 26.10.2001.*

11). *FIR No.73 dated 25.03.2000, U/s 399/402 IPC
PS Sadar Sonapat – Sentenced for 03 years RI
& Fine of ₹1000/- by the Ld. Court of Addl.
Sessions Judge, (FTC), Sonapat on
27.11.2002-Sentence completed on
04.08.2010.”*

The petitioner had filed application for his premature release in terms of the policy dated 8.8.2000. According to the petitioner, he has suffered actual sentence of 16 years 11 months and 26 days and total sentence of more than 20 years, therefore, even if he falls in Clause 2(a) of the policy, the period of actual sentence and the sentence with remission has already been spent and therefore, he is entitled for premature release.

Learned counsel for the respondents has submitted that the case of the petitioner was considered by the State Level Committee and it has been found that it is covered under para 2(a)(iv), (xiv) and (xvii) of the policy. It is also submitted that he belongs to the gang of habitual offenders, who commit dacoity and murder in gangs and move from one place to another for committing dacoity/robbery and is a danger to the public safety and security. Thus, keeping in view the heinousness of the crime, his case was not recommended for premature release.

I have heard learned counsel for the parties and perused the record.

There is no dispute that the policy dated 08.08.2000 is applicable to the case of the petitioner. It is also not in dispute that the petitioner has already spent 16 years 11 months and 26 days of actual sentence and 21 years 03 months and 18 days of total sentence. It is also not disputed that there were 11 cases registered against the petitioner which are

mentioned hereinabove. It is also not disputed that the petitioner has been acquitted in 6 cases, discharged in 2 cases, has undergone sentence in 1 case, completed his sentence in 1 case and in 1 case he has been released on bail.

The policy is regarding premature release of life convicts which has several parts in which Clause 2(a) deals with the cases of the convicts whose death sentence has been commuted to life imprisonment and convicts who have been imprisoned for life having committed a heinous crime. The heinous crime is also defined specifically in the Policy from Clause 2(a)(i) to (xvii). In regard to Clause 2(a) of the Policy, the case of a convict would be considered after completion of 14 years of actual sentence including remission not less than 20 years. Clause 2(b) of the Policy pertains to adult life convicts whose cases are not covered under Clause 2(a) of the Policy and who have committed crime which are not considered heinous as mentioned in Clause 2(a) of the policy. These types of cases are considered after completion of 10 years actual sentence including under-trial period provided that the total period of such sentence including remission is not less than 14 years.

There is no dispute that the case of the petitioner falls within the definition of Clause 2(a) of the Policy which may either be considered in Clause 2(iv) of the policy i.e. murder with dacoity, Clause 2(xiv) i.e. convicts, who cannot for some definite reasons be prematurely released without danger to public safety and Clause 2(xvii) of the Policy i.e. any other crime that the State Level Committee considered to be 'heinous' for reasons to be recorded in writing. In any kind of heinous crime, the convict is to complete 14 years of actual sentence and 20 years of total sentence.

In the present case, the petitioner has admittedly completed 16

years of actual sentence and 21 years of sentence after remission, therefore,

his case deserves to be considered in terms of Clause 2(a) of the Policy and cannot be declined on the ground that he may be a danger to the society. Hence, the impugned dated 17.08.2017 is hereby set aside and the matter is remanded back for reconsideration by respondent No.1, who is directed to pass appropriate orders in accordance with law within a period of one month from the date of receipt of certified copy of this order.

07.09.2018

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking /reasoned : Yes/No

Whether Reportable : Yes/No