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

CWP No.9880 of 2018

Date of decision: September 28, 2018

Harnek Singh @ Nika

...Petitioner

Versus

State of Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. S.S.Rana, Advocate,
for the petitioner.

Ms. Rukhsaar Dhindsa, AAG, Punjab.

Rakesh Kumar Jain, J.

The petitioner has prayed for the issuance of a writ in the nature of *certiorari* for quashing the order dated 25.05.2017 by which his prayer for his premature release has been declined.

In brief, the petitioner was tried in a criminal case registered vide FIR No.61 dated 31.12.2005, under Sections 302, 120-B and 201 IPC at Police Station Railway Police, Patiala and was convicted and sentenced by the Additional Sessions Judge (Fast Track Court), Patiala on 26.08.2009 for life imprisonment.

According to the respondents, the petitioner was transferred from Central Jail, Patiala to Open Air Agricultural Jail, Nabha on 17.11.2013. However, on 10.08.2014, the petitioner along with his co-accused Malkiat Singh @ Kitta had a quarrel with convict Jasvir Singh, who was lodged with them, and an entry in this regard was made in his history ticket. He also misbehaved with the jail authorities and in this regard, the case for judicial appraisal was sent to the District and Sessions Judge, Patiala which was

allowed on 25.08.2014. It is further averred in the reply that the petitioner along with his co-accused Malkiat Singh @ Kitta had escaped from Open Air Agricultural Jail, Nabha on 13.08.2014. However, they were arrested on 19.08.2014 and FIR No.77 dated 13.08.2014, under Section 224 IPC was registered against them at Police Station Sadar, Nabha. It is also averred that the case of the petitioner for premature release was to be considered in terms of the policy dated 04.04.2013 after completion of 10 years of actual sentence and 14 years of total sentence with remissions, which the petitioner had completed on 09.01.2016, but since the petitioner did not maintain good conduct for the last five years and committed jail offence by escaping from the Open Air Agricultural Jail, Nabha on 13.08.2014, therefore, it was decided vide the impugned order dated 25.05.2017 that the case of the petitioner can be considered after completion of five years of the jail offence.

Counsel for the petitioner has submitted that the premature release case of co-accused Malkit Singh @ Kita, who had also escaped from the Open Air Agricultural Jail, Nabha, along with the petitioner on 13.08.2014, has already been decided and he has been released prematurely. In this regard, he has referred to a decision of this Court rendered in the case of **Malkiat Singh @ Kitta vs. State of Punjab and another**, CRWP-22-2018, decided on 16.01.2018. The said order is reproduced as under:-

“This is a petition under Article 226 of the Constitution of India praying that case of the petitioner for premature release needs to be considered afresh. Reliance is placed on the judgment delivered in **Kamal Kant Tewari vs. State of Punjab and others**, 2014(2) RCR (Criminal) 940.

Learned State counsel at the outset submits that case of the petitioner shall be considered afresh by the competent authority in light of aforesaid judgment and speaking order shall be passed.

In view of statement made by learned State counsel, no further direction is necessary. Needful be done expeditiously preferably within a period of one month.

Petition is disposed of in these terms.”

In the reply filed by respondents on 30.07.2018 to the averments made in para 6 of the writ petition wherein the petitioner had made a reference to the order dated 16.01.2018, reproduced here-in-above, it is submitted by the respondents that *“in reply to the contents of para no.6, it is submitted that as per letter No.8953/CT dated 16.07.2018 (Annexure R-5/T) of the office of the Superintendent, Central Jail, Patiala, the co-accused of the petitioner Gurnam Singh and Amarjit Singh have been released from Central Jail. Co-accused Malkiat Singh is presently undergoing life imprisonment in this jail. His case for premature release is pending before the O/o Additional Director General of Police (Prisons), Punjab, Chandigarh”*.

Since the petitioner has claimed parity with his co-accused Malkiat Singh @ Kitta, who had also escaped from the Open Air Agricultural Jail, Nabha with him, therefore, the present petition is hereby disposed of with a direction to respondent no.1 to re-consider the case of the petitioner along with the case of his co-accused Malkiat Singh @ Kitta, if not decided, and if decided, then in terms of the decision taken in the case of Malkiat Singh @ Kitta because the facts and circumstances of both the cases are almost similar. The necessary orders in this regard be passed by respondent no.1 within a period of one month from the date of receipt of certified copy of this order.

September 28, 2018
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(Rakesh Kumar Jain)
Judge

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