

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

**CWP-3575-2019 (O&M)
Date of Decision: 15.7.2019**

Baljeet Singh

.....PETITIONER(s).

VERSUS

State of Haryana and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Varinder Singh Rana, Advocate
for the petitioner.

Mr. Manoj Kumar Sangwan, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.

This is a writ petition under Article 226/227 of the Constitution of India in the nature of Mandamus directing the respondents to release the petitioner prematurely in case FIR No.32 dated 9.1.2003 registered under Section 15 of Narcotic Drugs & Psychotropic Substance Act at Police Station Ratia, District Fatehabad.

The petitioner was convicted and sentenced to undergo rigorous imprisonment for 12 years along with fine of ₹ 1 lac or in default of payment of fine, the petitioner has to undergo simple imprisonment for two years under Section 15(c) of NDPS Act in the above mentioned case.

It has been submitted that similarly situated convicts approached this Court by filing CrWP No.839 of 2004; titled as Ekka

Ram v. State of Punjab and CRM-M-51177-2006 titled Mahi Ram v. State of Haryana which were allowed by this Court and even State has preferred Special Leave Petition (Criminal) 2496 of 2006.

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

It has been submitted that even as per reply filed by the State, the petitioner has undergone sentence of 6 years, 9 months and 19 days as on 10.3.2019. Thus, he has not undergone the requisite period of 12 years of total sentence.

The convict under the NDPS Act is not entitled to remission by virtue of Section 32-A of the Act. It has been held by Hon'ble Supreme Court in **Krishan and others v. State of Haryana and others** as under : -

“10. Both from the contents of the impugned letter and the source from which it emanated (the Director General of Prisons) it is obvious that such a direction could be issued only to those authorities such as the Superintendents of Jails who are subordinate to the Director General of Prisons. It is well known that under the Jail Manuals prepared in various States in this country either in exercise of or referable to the delegated powers conferred under the provisions of the Prisons Act, 1894 (Act 9 of 1894) and the Prisoners Act, 1900 (Act 3 of 1900). Various provisions in their manual are made for granting remission to the convicts. Such provisions entitle the prisoners for remission of the sentence under various heads, such as, good conduct etc. Such an entitlement is a creature of subordinate legislation duly authorised by the sovereign legislature. However, if by a subsequent enactment, such as the N.D.P.S. Act, the Parliament chose to deny the grant of remission to a particular class of convicts such as the convicts under the N.D.P.S. Act, - we do not see any illegality

therein. Even otherwise the constitutionality of section 32A has already been upheld by this Court in *Dadu @ Tulsidas* (supra).

11. The impugned letter only highlights the need to comply with the mandate of the Parliament as evidenced in section [32A](#) of the NDPS Act. To declare the impugned letter to be illegal on the ground that it is inconsistent with either the provisions of the said Manual or some other statutory provision anterior to the NDPS Act - would be impermissible because the subordinate legislation cannot override the provisions of a statute. Nor can an anterior legislative command be a basis for judging the legality of the later legislative command. One of the cardinal principles of the constitutional law is that the latest will of the sovereign should prevail.

12. For the above mentioned reasons, we do not see any error in the judgment under appeal. The question whether section 32A is a fetter on the authority and the powers of either the President of India or the Governor under Articles [72](#) and [161](#) of the Constitution respectively does not arise on the facts of the case. It is well settled principle that this Court will not adjudicate issues which do not arise strictly on the facts presented before this Court, more particularly when the question falls within the realm of the Constitutional interpretation. We, therefore, see no reason to examine the said question. The appeal is dismissed.”

It has been observed by Hon'ble Supreme Court in **Tara Singh and others v. Union of India and others**; 2016 (3) RCR (Criminal) 482 as under : -

“7. It is not in dispute that the petitioners have been convicted under the NDPS Act and various offences and sentenced to suffer rigorous imprisonment for more than 10 years and to pay a fine of L 1 lakh. The singular issue is whether denial of remission under the Manual is justified. Chapter XIX of the Manual deals with remission and reward. Paragraphs 563 to 588 deal with remission system. Paragraphs 589 and 590 deal with reward.

Paragraph 563 states that remission can be granted to prisoners by the State Government/Inspector-General/Superintendent Jails which is subject to withdrawal/forfeiture/revocation. It is not a right and the State Government reserves the right to debar/withdraw any prisoner or category of prisoners from the concession of remission. Paragraph 565 stipulates that remission is of three types, namely, ordinary remission, special remission and the State Government remission. Paragraph 567 postulates the eligibility criteria for prisoners who will be eligible for earning the State Government remission. Paragraph 571 provides what would constitute non-eligibility to get ordinary remission. Paragraph 572 lays down that ordinary remission is not earnable for certain offences committed after admission to jail. Paragraph 576 deals with remission for good conduct. Paragraph 581 provides for special remission. It lays down that special remission may be given to any prisoner except such prisoners who are deprived of remission by way of punishment whether entitled to ordinary remission or not for special reasons. Certain examples have been incorporated in special remission.

8. The Government of Punjab, Department of Home Affairs and Justice through Governor has issued an order in exercise of powers conferred by Section [432](#) of Cr.P.C. and Article [161](#) of the Constitution of India on 13th day of April, 2007 for grant of remission of sentence to certain types of convicts. The said order contains that instructions contained in the order shall not apply to the persons sentenced under the Foreigners Act, 1946 and the Passport Act, 1967 and the Narcotic Drugs and Psychotropic Substances Act, 1985. Similar circulars have been issued on 1.9.2008, 1.6.2010, 1.4.2011, 12.4.2012, 14.8.2013 and 13.8.2014. The said orders have been passed keeping in view the language used in Section [32A](#) of the NDPS Act and the judgment delivered in Dadu's case. Section [32A](#) of the NDPS Act reads as follows:-

"32-A. No suspension, remission or commutation in any sentence awarded under this Act.- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force but subject to the provisions of Section 33, no sentence awarded under this Act (other than Section 27) shall be suspended or remitted or commuted."

It has been further held by Hon'ble Supreme Court in para 18 to 22 of the aforesaid case as under : -

“18. The aforesaid decision makes it clear that the exercise of powers under Article 72 or 161 is quite different than the statutory power of remission. On that fundamental bedrock, the provision enshrined under Section 32-A, barring a part of the provision, has been held constitutionally valid in Dadu's case. The principle stated in Dadu (supra) does not run counter to the ratio laid down in Maru Ram (supra). It is in consonance with the same.

19. The petitioners have invoked the power of this Court to grant the benefit of remission in exercise of power under [Article 32](#) of the Constitution of India. Speaking plainly, the prayer is totally misconceived. It is urged in a different manner before us that the power exercised by this Court under [Article 32](#) and [Article 142](#) of the Constitution cannot be statutorily controlled. Though the argument strikes a note of innovation, yet the innovation in the case at hand cannot be allowed to last long, for it invites immediate repulsion. [Section 32-A](#) of the NDPS Act, as far as it took away the power of the Court to suspend the sentence awarded to the convict under the Act has been declared unconstitutional in Dadu's case. A convict can pray for suspension of sentence when the appeal is pending for adjudication. The aforesaid authority has upheld the constitutional validity of the Section insofar as it takes away the right of the executive to suspend, remit and commute the sentence. Negation of the power of the courts to suspend the sentence which has been declared as unconstitutional, as has been held in Dadu's case, does not confer a right on the convict to ask for suspension of the

sentence as a matter of right in all cases nor does it absolve the courts of their legal obligation to exercise the power of suspension within the parameters prescribed under [Section 37](#) of the NDPS Act. The constitutional power exercised under Articles 72 and 161 is quite different than the power exercised under a statute. Recently, in [Union of India v. V. Sriharan @ Murugan and ors](#)[4], echoing the principle stated in Maru Ram (supra), it has been held:-

“As has been stated by this Court in Maru Ram (supra) by the Constitution Bench, that the Constitutional power of remission provided under Articles 72 and 161 of the Constitution will always remain untouched, inasmuch as, though the statutory power of remission, etc., as compared to Constitution power under Articles 72 and 161 looks similar, they are not the same. Therefore, we confine ourselves to the implication of statutory power of remission, etc., provided under [the Criminal Procedure Code](#) entrusted with the Executive of the State as against the well thought out judicial decisions in the imposition of sentence for the related grievous crimes for which either capital punishment or a life sentence is provided for. When the said distinction can be clearly ascertained, it must be held that there is a vast difference between an executive action for the grant of commutation, remission etc., as against a judicial decision. Time and again, it is held that judicial action forms part of the basic structure of the Constitution. We can state with certain amount of confidence and certainty, that there will be no match for a judicial decision by any of the authority other than Constitutional Authority, though in the form of an executive action, having regard to the higher pedestal in which such Constitutional Heads are

placed whose action will remain unquestionable except for lack of certain basic features which has also been noted in the various decisions of this Court including Maru Ram (supra)".

20. What is being urged is as constitutional powers under Articles 72 and 161 are different and they remain untouched even by sentence of this Court, similar powers can be exercised under [Article 32](#) of the Constitution of India. [Article 32](#) of the Constitution of India enables a citizen to move this Court for enforcement of his fundamental rights. Moving this Court for the said purpose is fundamental. The larger Bench of the Court has already upheld the constitutional validity of [Section 433-A](#) CrPC. The three-Judge Bench has declared barring a small part of [Section 32-A](#) of the NDPS Act as constitutional. The recent Constitution Bench decision in V. Sriharan (supra) has clearly opined that the constitutional power engrafted under Articles 72 and 161 are different than the statutory power enshrined under [Section 433-A](#) CrPC. The petitioners do not have a right to seek remission under [the Code](#) because of [Section 32A](#) of the NDPS Act. They can always seek relief either under [Article 71](#) or 161 of the Constitution, as the case may be. That is in a different domain.

21. The issue here is whether a writ of mandamus can be issued to authorities to grant remission to the petitioners. In Ramdas Athawale (5) v. Union of India and others[5], it has been held by the Constitution Bench that:-

“46. It is equally well settled that [Article 32](#) of the Constitution guarantees the right to a constitutional remedy and relates only to the enforcement of the right conferred by Part III of the Constitution and unless a question of enforcement of a fundamental right arises, [Article 32](#) does not apply. It is well settled that no petition under [Article 32](#) is maintainable, unless it is shown that the petitioner has some fundamental right. In [Northern Corpn. v.](#)

[Union of India](#)[6] this Court has made a pertinent observation that when a person complains and claims that there is a violation of law, it does not automatically involve breach of fundamental right for the enforcement of which alone [Article 32](#) is attracted.

47. We have carefully scanned through the averments and allegations made in the writ petition and found that there is not even a whisper of any infringement of any fundamental right guaranteed by Part III of the Constitution. We reiterate the principle that whenever a person complains and claims that there is a violation of any provision of law or a constitutional provision, it does not automatically involve breach of fundamental right for the enforcement of which alone [Article 32](#) of the Constitution is attracted. It is not possible to accept that an allegation of breach of law or a constitutional provision is an action in breach of fundamental right. The writ petition deserves dismissal only on this ground”.

22. The present factual matrix does not remotely suggest that there has been violation of any fundamental right. There is no violation of any law which affects the fundamental rights of the petitioners. The argument that when a pardon or remission can be given under [Article 72](#) or 161 of the Constitution by the constitutional authority, this Court can exercise the similar power under [Article 32](#) of the Constitution of India is absolutely based on an erroneous premise. [Article 32](#), as has been interpreted and stated by the Constitution Bench and well settled in law, can be only invoked when there is violation of any fundamental right or where the Court takes up certain grievance which falls in the realm of public interest litigation, as has been held in [Bandhua Mukti Morcha v. Union of India and others](#)[7] and [Samaj Parivartana Samudaya and others v. State of Karnataka and others](#)[8]. Therefore, we

repel the submission on the said score. It has also been argued that this Court can issue a direction to do complete justice to grant remission. In this context, a passage from Supreme Court [Bar Association v. Union of India and another](#)[9] is apt quoting:-

“48. The Supreme Court in exercise of its jurisdiction under [Article 142](#) has the power to make such order as is necessary for doing complete justice ‘between the parties in any cause or matter pending before it’. The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by ‘ironing out the creases’ in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a ‘problem- solver in the nebulous areas’ (see [K. Veeraswami v. Union of India](#)[10]) but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under [Article 142](#). Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject.”
[emphasis in original]

Keeping in view the above and considering the facts and circumstances of the case discussed above, the petitioner is not entitled to

premature release.

Accordingly, the present petition is devoid of any merit and is dismissed.

July 15, 2019
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>