

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

CWP-14413-2018 (O&M)

Date of decision : 11.01.2019

Dhan Singh

..... Petitioner

Versus

State of Punjab and ors

..... Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

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

Ms. Sunint Kaur, AAG, Punjab.

1. *Whether the Reporters of local newspaper may be allowed to see the judgment ?*
2. *To be referred to the Reporter or not.*
3. *Whether the judgment should be reported in the digest ?*

KULDIP SINGH J. (ORAL)

Heard.

This is a petition filed under Article 226 of the Constitution of India for issuance of a writ in the nature of mandamus to reconsider the case of the petitioner for pre-mature release in view of the government policy dated 8.7.1991 (Annexure P-1) issued by Government of Punjab, Department of Home Affairs and Justice, Home-7, Branch and for quashing of the order dated 13.4.2018 (Annexure P-4) passed by Additional Chief Secretary, Punjab Government, Home Affairs and Jails Department being illegal, arbitrary and discriminatory.

Short facts which are required to be considered for the purpose of the decision of the case are that petitioner was convicted and sentenced to undergo life imprisonment in case FIR No. 23 dated 3.3.2003, registered at Police Station Lalru for the offence under Section 302, 460, 454 and 455, 379 read with Section 149 of the Indian penal Code in addition to fine by learned Additional Sessions Judge, Patiala.

Learned counsel for the petitioner contends that petitioner has undergone requisite sentence and is entitled for pre-mature release. His case for pre-mature release was declined by Additional Chief Secretary, Punjab Government, Home Affairs and Jails Department vide order dated 13.4.2018 (Annexure P-4) only on the ground that it was not recommended by District Magistrate as well as Sr. Superintendent of Police, Shahjahanpur.

State has filed the reply in which plea has been taken that the pre-mature case of the petitioner was declined on the basis of the non-recommendation of the Sr. Superintendent of Police, Shahjahanpur (U.P.). It was stated that the case of the petitioner for pre-mature release was again initiated by Additional Director General of Police (Jails), Punjab Chandigarh vide letter No. G.I./J.-4/5751 dated 15.5.2017. However, on the basis of the non-recommendation of the report of the Sr. Superintendent of Police, Shahjahanpur and pre-mature release case was not recommended by the District Magistrate, Shahjahanpur.

A perusal of the impugned order 13.4.2018 (Annexure P-4) passed by Additional Chief Secretary, Punjab Government, Home Affairs and Jails Department shows that as per jail roll dated 5.9.2017, the petitioner has undergone 14 years 21 days of actual sentence and with remission (excluding parole) 22 years and 21 days of sentence. Therefore, petitioner has already completed 12 years of actual sentence and 18 years with remission which is required to be completed as per the government policy dated 8.7.1991 (Annexure P-1). However, Sr. Superintendent of Police, Shahjahanpur as well as the District Magistrate, Shahjahanpur have not recommended the case of the petitioner.

I am of the view that the recommendation of the Sr. Superintendent of Police, Shahjahanpur as well as the District Magistrate, Shahjahanpur are not binding on the State. These are the facts, to be considered, by the State Government. State has to consider whether the apprehension of the police and the District Magistrate, Shahjahanpur is imaginary or real. Merely because Sr. Superintendent of Police, Shahjahanpur apprehend without any material that the petitioner may commit crime again, the pre-mature case of the petitioner could not be declined.

As such, impugned order dated 13.4.2018 (Annexure P-4) passed by Additional Chief Secretary, Punjab Government, Home Affairs and Jails Department is set aside. State is directed to reconsider the case of the petitioner for pre-mature release and take fresh decision on the matter after considering whether the non-recommendation report of the Senior Superintendent of Police, Shahjahanpur and District Magistrate, Shahjahanpur is to be relied upon and whether the same is based on facts or not? Necessary decision be taken within two months from the date of receipt of certified copy of this order.

Disposed of.

(KULDIP SINGH)
JUDGE

11.01.2019
preeti

Whether speaking / reasoned
Whether Reportable:

Yes
No