

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

**CWP-1761-2018 (O&M)
Date of decision:10.01.2019**

Avtar Singh and others

.....Petitioners

versus

State of Haryana and others

....Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Ms. Loveleen Dhaliwal, Advocate for the petitioners.

Mr. Gaurav Jindal, Addl. A.G. Haryana.

Kuldip Singh, J. (Oral)

Petitioners Avtar Singh, Balbir Singh and Fateh Singh were convicted by learned Additional Sessions Judge, Kaithal vide judgment of conviction dated 21.11.2006 and order of sentence dated 27.11.2016 (Annexure P-4) under Sections 148, 302, 326, 325 & 324 of Indian Penal Code along with seven other co-accused and sentenced to the maximum imprisonment for life.

According to the petitioners, they have undergone the requisite sentence of 10 years without remission and 14 years with remission and qualify to be considered for premature release under the Policy dated 12.04.2002 (Annexure P-7). However the Government of Haryana vide impugned orders dated 03.04.2017 (Annexures P-1 to P-3) rejected their case on the ground that case of the petitioners is covered under Clause 2(a) (x) (murder exhibiting brutality such as cutting body in piece etc.) and not

under Clause 2(b) which pertain to ordinary murders. Therefore, the petitioners are required to undergo the actual sentence of 14 years and with remission 20 years. The petitioners have challenged the said order being illegal.

The State in the reply while referring to Section 433 A of Cr.P.C. has taken the plea that the petitioners are required to undergo actual sentence of 14 years. It was further pleaded that the petitioners cannot claim the premature release as a matter of right unless the State Government commutes the sentence of life convict through a written order passed under Section 432/433 A Cr.P.C. The State Government has framed the premature release policy from time to time and the concession is to be considered on the basis of behavior of the convict inside the jail, gravity and the nature of the offence and circumstances under which crime was committed. It was stated that the matter regarding the petitioners was placed before the State Level Committee on 27.02.2017 and after going through the injuries, the Committee was of the view that the murder is exhibiting brutality and is covered under Clause 2(a)(x) of the Policy dated 12.04.2002 (Annexure P-7). As such, the petitioners have not undergone the requisite sentence. It was further stated that in the order of three other co-accused namely Kirpal Singh @ Pala, Raminder Singh @ Rama and Kulwant Singh of premature release, was recalled on the ground that murder exhibiting brutality is covered under Clause 2(a)(x) of the Policy dated 12.04.2002 (Annexure P-7). It is further observed that part of the right big toe of the deceased was chopped off with skin and muscles and adjoining second and third toe area

was chopped off with skin and muscles. Haemotama was seen around of wounds which is covered under Clause 2(a)(x). The State Government has also produced the custody certificate which shows that the petitioners have undergone actual sentence of more little than 10 years and with remission more than 14 years in case of all the three petitioners.

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

In order to see whether the case of the petitioners is covered under Clause 2(b) or Clause 2(a)(x) it is necessary to reproduce the said Clauses:-

“2(a)(x) Murder exhibiting brutality such as cutting the body into piece of burning/dragging the body as evident from judgment of the Court.

2(b) Adult life convicts who have been imprisoned for life but who cases are not covered under (aa) and (a) above and who have committed crime which are not considered crime which are not considered heinous as mentioned in Clause (aa) & (a) above.

Their cases may be considered after completion of 10 years actual sentence including undertrial period provided that the total period of such sentence including remissions is not lesser than 14 years.”

Under Clause 2(a)(x), the crime is treated as heinous and the convict is required to undergo 14 years of actual sentence and with remission not less than 20 years. It is only after the said qualifying period their case to be considered. First of all, this Court is required to decide whether the murder was brutal and is covered under Clause 2(a)(x) or 2(b).

For this purpose one has to fall back on the judgments of the trial Court and see the nature of the injuries. The relevant injury is reproduced as under:-

“A part of the right big toe and adjoining second and third toe area chopped off with skin and part of muscles. Haemotama was seen around the wound.”

The injury shows that the part of the right big toe and adjoining second and third toe area was chopped off with skin and muscles. In this way, there is a cutting of the part of the body.

Learned counsel for the petitioner has contended that the Clause 2 (a)(x) means that if the body is cut into piece which refer to several pieces and not cutting of one piece.

I am of the view that in the said Clause, word “piece” is used that means chopping a part of body which may be a limb, head, leg or any part of the body. Therefore it would mean that even if a part of body is severed, it will be covered under Clause 2(a)(x). Since in the present case, right big toe and adjoining second and third toe area were chopped off, therefore, it amount to cutting of part of the body into piece and is covered under Clause 2(a)(x). As such the petitioners are required to undergo the actual sentence of 14 years and with remission 20 years as per policy dated 12.04.2002 (Annexure P-7).

Learned counsel for the petitioners has further argued that the orders in this case were passed by the Government. The case was considered by State Level Committee and was never sent to the Governor. Therefore, the impugned orders are liable to be quashed. Learned counsel has referred to the Clause 5 of the said Policy dated 12.04.2002 (Annexure

P-7). The relevant Clause reproduced as under :-

“5. The Director General of Prisons, Haryana Shall put up all such premature release cases to the State Level Committee for consideration. The Committee will meet once in three months according to the convenience of the Minister for jails, Haryana so that cases of review under this policy are not delayed. The Director General of Prisons, Haryana further will forward a copy of the decision taken by the committee alongwith the roll of the each of the life convict to the State Government within one week for further action. Such cases will be put up to the Governor through the Minister for Jails and the Chief Minister, Haryana with full background of the prisoner and recommendations of the committee alongwith the copy of judgment etc. for orders under Article 161 of the Constitution of India.”

The perusal of the said Clause shows that under the said policy the matter has to be referred to the Governor under Article 161 of the Constitution of India. Therefore, the plea raised in the written statement as well as at the time of argument that the matter was considered under Section 432 and 433 A of Cr.P.C. is without any force. In fact, under the policy dated 12.04.2002 (Annexure P-7), the matter was to be considered under Article 161 of the Constitution of India.

Learned State counsel has further argued that thereafter, the policy of 2008 has come into operation and the convict could be given the benefit of the beneficial provisions of the said policy. However, by-passing the Governor, cannot be called a beneficial provision to the accused. The case is to be put before the Governor/Chief Minister to see whether the State

Level Committee has rightly or wrongly considered the matter. As such, the said argument is found to be without any force. It is specifically held that in such cases under the policy dated 12.04.2002 (Annexure P-7) the matter is required to be referred to the Governor of the State.

Now face with these circumstances, it has to be found that impugned orders dated 03.04.2017 (Annexures P-1 to P-3) passed by learned Additional Chief Secretary to the Government of Haryana, declining the premature release, are found to be illegal and are hereby quashed. However, there is no need for the State to re-consider the matter at this stage, since the petitioners have not undergone the actual sentence of 14 years and with remission 20 years. |It is further directed that whenever the petitioners undergone the requisite sentence as observed above, their case will be considered under the policy dated 12.04.2002 (AnnexureP-7) and the matter will be referred to the Governor for final decision.

Accordingly, petition is dismissed.

(KULDIP SINGH)
JUDGE

10.01.2019
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Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes