

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CWP-21399-2018 (O&M)
Date of Decision: 16.5.2019

Om Parkash

.....PETITIONER(s).

VERSUS

State of Haryana and others

.....RESPONDENT(s).

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

Present: Mr. D.N.Ganeriwala, Advocate
for the petitioner.
Mr. Vikas Chopra, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.

This is a writ petition under Article 226/227 of the Constitution of India in the nature of certiorari for quashing impugned order dated 2.8.2018 (Annexure P-2) vide which the claim of the petitioner with regard to pre-mature release has been deferred for two years by observing as under : -

“.... He was convicted and sentenced to life imprisonment in case FIR No.197 dated 21.09.1996 P.S. Nathusari Chopta U/s 302/201/148/149 IPC on 08.08.2000 by the Ld. Addl. Sessions Judge, Sirsa. Total period of sentence undergone by this convict in the jail upto 10.05.2018 is as under :

	Y	M	D
ACTUAL SENTENCE	16	05	20
TOTAL SENTENCE	20	00	00

2. The date of conviction of this life convict is 08.08.2000, so, the policy of pre mature release dated 08.08.2000 applicable in this case, the state level committee has considered this case recommended that this case is cover under para 2(a)(ix) (murder of a woman) and (xiv) (convicts who cannot for some definite reason be prematurely released without danger to public safety) of the policy dated 08.08.2000. apart from this life convict's involvement in this case when he along with four other family members barbarically murdered two unarmed and helpless women by severing their head, he has been involved in three other serious criminal offence dacoity, NDPS act and Excise Act. In the dacoity case, he has been convicted and sentenced to ten year R.I. When he was on parole he has also committed two jail offences including misbehaviour and giving threat to kill the prison officer. Thus, he has abused the parole facilities provided by the government. He is still young had danger to public safety. His release would not be in public interest. Moreover, no convict has fundamental right of remission or shortening of sentence. The state government in exercise of its executive/discretionary power of remission is to consider each individual case keeping in view all the relevant factors.”

Clause 2(aa)(a) of policy Annexure P-1 reads as under : -

“(aa) X X X

(a) Convicts who have been imprisoned for life having committed a heinous crime such as	Their cases may be considered – after completion of 14 years actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 20 years
(i) Murder with wrongful confinement for extortion/robbery	
(ii) Murder while undergoing life sentence	
(iii) Murder with dacoity	
(iv) Murder with offence under TADA Act, 1987	
(v) Murder with Untouchability (Offences) Act, 1955	
(vi) Murder in connection with dowry	
(vii) Murder of a child under the age of 14 years	
(viii) Murder of a woman	
(ix) Murder after abduction or kidnapping	
(x) Murder exhibiting brutality such as cutting the body into piece of burning/dragging the body as evident from the judgment of the court	
(xi) Persistant bad conduct in the prison	
(xii) Convicts who cannot for some definite reasons be prematurely released without danger to public safety	
(xiii) Convicts who have been imprisoned for life under section 120-B of IPC.	
(xiv) Any other crime that the State Level Committee considers to be 'heinous' for reasons to be recorded in writing	

As per the said policy, the case of the petitioner should be considered after completion of 14 years of actual sentence including

undertrial period provided that the total period of such sentence including remissions is not less than 20 years. Undisputedly, the case of the petitioner is fully covered under the said policy. He has undergone actual sentence of 16 years, 11 months and 14 days and total sentence undergone is 20 years, 7 months and 3 days as on 14.1.2019.

The claim of the petitioner was deferred for two years solely on the ground that he committed double murder.

In view of the above, impugned order dated 2.8.2018 (Annexure P-2) is not sustainable in the eyes of law and is set aside.

The present petition is disposed of with a direction to the State to re-consider the claim of the petitioner in terms of policy (Annexure P-1) within a period of 90 days from the date of receipt of a certified copy of this order. In the meantime, the petitioner is ordered to be released on bail subject to the satisfaction of the learned Chief Judicial Magistrate/Duty Magistrate.

May 16, 2019
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

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