

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4174-2018 (O&M)
Date of decision: 10.01.2019

Rajender

.....Petitioner

versus

State of Haryana and another

....Respondents

CORAM: Hon'ble Mr. Justice Kuldip Singh

Present: Mr. H.P.S. Aulakh, Advocate for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Kuldip Singh, J. (Oral)

The present petitioner-Rajender along with two co-accused was convicted by learned Additional Sessions Judge, Hisar vide judgment dated 28.09.2002 (Annexure P-2) under Sections 302 IPC read with Section 34 IPC and Section 449 IPC and sentenced to undergo maximum imprisonment for life.

Petitioner claims that he has completed the actual sentence of 10 years without remission and with remission 14 years and therefore as per the policy dated 12.04.2002 (Annexure P-3) which govern their case, he is qualified for consideration for premature release. However, Government of Haryana vide order dated 01.01.2018 (Annexure P-1), rejected the case of the petitioner on the ground that his case is covered under Clause 2(a)(x) as it is a brutal murder as observed by the trial Court. Therefore, they have to undergo the actual sentence of 14 years and with remission 20 years. The

petitioner has challenged the said order dated 01.01.2018 (Annexure P-1) vide which the petitioner's premature case was rejected by the Government.

The State in the reply has taken the stand that under Section 433A of Cr.P.C., a life convict is required to undergo minimum sentence of 14 years. The State Government has the power to release the convict prematurely by considering his jail record and his conduct. Therefore the premature release cannot be claimed as a matter of right. It is further stated that the petitioner has undergone the actual sentence of 11 years 08 months & 20 days and with remission 14 years, 08 months & 18 days, whereas, he is required to undergo actual sentence of 14 years and with remission minimum 20 years as his case is covered under Clause 2(a)(x) of the Policy dated 12.04.2002 (Annexure P-3).

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

Learned counsel for the petitioner has referred to judgment dated 07.12.2018, passed by this Court in CWP-22835-2018 titled as "Baljit vs. State of Haryana and others", whereby, order of declining his premature release was set aside. The perusal of the said judgment shows that in the said case order of the Government of Haryana was found to be factually incorrect as it was recorded that in the said order that two persons were killed, whereas, actually one person was killed. Therefore, Government of Haryana was directed to re-consider the case. The present case has been decided on different footing i.e. on the ground that the petitioner has exhibited brutality and his case is covered under Clause 2(a)(x) of the

Policy dated 12.04.2002 (Annexure P-3). The relevant Clause in dispute is reproduced as under:-

*“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.” (emphasis supplied)*

The perusal of the said Clause shows that a crime is treated as “heinous crime” and a person is required to undergo the actual sentence of 14 years and with remission not less than 20 years, if the case is covered under Clause 2(a)(x) pertains to murder exhibiting brutality. It is mentioned that murder exhibiting brutality “**Such as**” cutting body into piece or burning/dragging the body as evident from the judgment of the Court.

According to learned counsel for the petitioner body was not cut into pieces nor the body was burnt nor dragged, therefore, it is not the case of murder exhibiting brutality.

On the other hand, learned State counsel has argued that the fact of cutting the body into pieces, burning or dragging are only the illustrations of exhibiting brutality mentioned in the said Clause as word used is “**Such as**”. It gives some illustrations of brutality. Therefore, illustrations are not exhaustive and the brutality can be exhibited from the other circumstances also.

After going through the Clause, I am of the view that in the Clause 2(a)(x) of the Policy dated 12.04.2002 (Annexure P-3) only few illustrations of brutality have been given. The said Clause does not exhaustively lay down that only the those cases covered by illustrations falls

in the definition of brutality. It says “**Such as**” which means that it gives only few illustrations of brutality. Therefore, to determine whether the murder was committed with brutality, the State Level Committee/Governor of State can examine the nature of injuries. In the present case, the injuries are mentioned by the trial Court which shows that there are as many as 12 injuries. The trial Court while convicting the accused observed that a person has been brutality murder by causing large number of injuries with dangerous weapons like *gandasa*. The examination of injuries reveal that in fact it was a brutal murder. Therefore, the State Level committee could consider the nature of injuries to find whether murder is with brutality or it is a simple murder. At the same time, it is found that under Clause 5 of the said policy dated 12.04.2002 (Annexure P-3), matter was required to be refer to the Governor of the State. The said Clause is 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.”

In this case, admittedly, the matter was decided by the State Level Committee and the matter was never referred to the Governor of the State. As such, the impugned order dated 01.01.2018 (Annexure P-1) is quashed. While holding that it is for the Governor of the State to consider whether it is a murder with brutality and then decide as to whether in such case, the petitioner is to be released prematurely or not. Let the Governor of Haryana reconsider the case in accordance with law and take fresh decision on the matter in view of the observations above, within three months from the date of receipt of certified copy of the order.

Accordingly, petition is disposed of.

(KULDIP SINGH)
JUDGE

10.01.2019
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Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes