

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-12683-2018

Date of Decision:-18.07.2019.

Vinod Kumar and another

.....Petitioners

Versus

State of Haryana through Principal Secretary to Govt., Govt. of Haryana, Home Department and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Vipul Jindal, Advocate for the petitioners.

Mr. Pawan Garg, AAG, Haryana.

RAJ SHEKHAR ATTRI, J.

Petitioners have filed this petition under the provisions of Articles 226/227 of the Constitution of India for issuance of a writ, order or direction in the nature of certiorari/mandamus quashing their further detention as the same has become violative of Articles 14, 19 and 21 of the Consitution of India; a writ in the nature of mandamus holding that they have become entitled to be released prematurely on the basis of policy under Article 161 dated 12.04.2002 of Haryana Government on usual terms and conditions after completion of 10 years actual sentence and 14 years total sentence and for grant of all consequential reliefs.

Petitioners were convicted and sentenced in case FIR No.21 dated 20.02.2008 registered under Sections 302, 342, 452 and 34 IPC at Police Station Odhan, District Sirsa. The learned Sessions Judge, Sirsa vide order dated 08.05.2009 sentenced both the petitioners to undergo imprisonment for life and to pay a fine of Rs.5,000/- each under Section 302 IPC. In default of payment of

fine, petitioners were required to undergo for 1 month each. The period of detention during investigation in the trial of the case was directed to be set off from the period of sentence awarded to them.

Learned counsel for the petitioners placed reliance on the judgment passed by the Hon'ble Supreme Court in State of Haryana and others Vs. Jagdish reported as 2010 (4) SCC 216 wherein in para Nos.42 and 43, it has been held as under:-

“42. We have already noticed that the earlier policies including the policy dated 04.02.1993 refers to the exercise of powers under Article 161 of the Constitution whereas the policy dated 13.08.2008 is in exercise of the powers under Section 432 read with Sections 433 and 433-A of Cr. P.C. The restriction under Section 433-A is only to the extent of the powers to be exercised in respect of offences as referred to under Section 432 Cr.P.C. The notification dated 13.08.2008 is, therefore, under a rule of procedure, which is subordinate to the Constitution. The power exercised under Article 161 of the Constitution is obviously a mandate of the Constitution and, therefore, the policy dated 13.08.2008 cannot override the policy dated 04.02.1993.

43. The right of the respondent prisoner, therefore, to get his case considered at par with such of his inmates, who were entitled to the benefit of the said policy, cannot be taken away by the policy dated 13.08.2008. This is evident from a bare perusal of the recitals contained in the policies prior to the year 2008, which are referable to Article 161 of the Constitution. The High Court, therefore, in our opinion, was absolutely justified in arriving at the conclusion that the case of the respondent was to be considered on the strength of the policy that was existing on the date of his conviction. State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for pre-mature release would be considered after serving

the sentence, prescribed in the short sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "life for pre-mature release, he should be given benefit thereof."

Learned counsel for the petitioners submits that he would be satisfied if a direction is issued to the concerned authorities to consider the case of the petitioners with regard to pre-mature release in view of the above cited Supreme Court decision.

In this view of the matter State is directed to consider the claim of the petitioners with regard to pre-mature release as per the ratio laid down by the Hon'ble Supreme Court in ***State of Haryana and others Vs. Jagdish*** (supra) within a period of 90 days from today.

With aforesaid direction, writ petition stands disposed of.

(RAJ SHEKHAR ATTRI)
JUDGE

July 18, 2019.
sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.