

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-968-2020

Date of Decision:-15.09.2020.

Naresh Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR

Present: Mr. Sanjiv Sheoran, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

SANJAY KUMAR, J. (Oral)

Challenge in this writ petition is to the order dated 10.04.2019 (Annexure P-5) passed by the Director General of Police (Prisons), Haryana, rejecting the request of the petitioner, *vide* his representation dated 15.01.2018, for premature release.

The petitioner was convicted for the murder of his wife under Section 302 of the Indian Penal Code, 1860 (for short, 'the IPC'), in Sessions Case No.47 of 2005 on the file of the learned Additional Sessions Judge, Jhajjar, *vide* judgment dated 31.10.2008. He was sentenced to rigorous imprisonment for life and payment of a fine of ₹ 50,000/-. In default thereof, he was to undergo further rigorous imprisonment for 2 years. The conviction and sentence visited upon the petitioner stood confirmed in ***Criminal Appeal No.D-832-DB-2008***, titled '***Naresh Kumar Vs. State of Haryana***', *vide* judgment dated 06.11.2012. The Special Leave Petition

filed by the petitioner before the Supreme Court of India was also dismissed. The petitioner was arrested on 27.07.2005 in relation to this case and his under-trial custody extended up to 10.08.2006. Post conviction, he was in custody from 31.10.2008 onwards. He submitted application dated 15.01.2018 seeking premature release under the Government's Policy dated 13.08.2008, regarding premature release of life convicts. Having considered the same, the Director General of Police (Prisons), Haryana, held the petitioner disentitled for early release in terms of the Policy, by way of his order dated 10.04.2019 (Annexure P-5). Perusal of the said order demonstrates that the petitioner did not undergo the requisite sentence to avail the benefit of premature release. The Director General treated the case of the petitioner as one falling under clause (b) of the Policy.

Mr. Sanjiv Sheoran, learned counsel for the petitioner, would however contend that the case of the petitioner falls within the ambit of clause (c) and not clause (b) of the Policy. Clause (b) of the Policy deals with convicts who have been imprisoned for life, having committed any crime which is defined under the IPC and/or The Narcotic Drugs and Psychotropic Substances Act, 1985, as punishable with death sentence. Clause (c), on the other hand, deals with convicts who have been imprisoned for life, having committed a crime which is defined in the IPC as punishable with life imprisonment but not with death sentence.

Pertinent to note, both clauses deal with convicts who are undergoing life imprisonment but the distinction that is drawn between them is with regard to the crime for which they have been convicted and the

permissible punishment therefor under the IPC. If the crime committed, in terms of the prescription in the IPC, attracts a death sentence, the case would invariably come within the ambit of clause (b) of the Policy.

Trite to state, Section 302 IPC provides for imposition of the death sentence. That being so, the case of the petitioner squarely fell within clause (b) and not under clause (c) of the Policy, as is being contended. In terms of clause (b), the petitioner had to complete 14 years of actual sentence, including under-trial period, and the total period of such sentence, including remission, should be not less than 20 years. In the present case, the petitioner had undergone the actual sentence of 12 years, 3 months and 13 days as on 29.01.2020 and the total sentence undergone by him, taking into account the remission earned, aggregated to 15 years, 5 months and 13 days as on 29.01.2020. Therefore, he did not fulfill the requisite conditions prescribed in the Policy to avail the benefit of premature release.

This Court therefore finds no illegality in the order dated 10.04.2019 passed by the Director General of Police (Prisons), Haryana, stating to this effect.

The writ petition is devoid of merit and is accordingly dismissed.

No order as to costs.

(SANJAY KUMAR)
JUDGE

September 15, 2020.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.