

2023:PHHC:096775

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRWP-1133-2023

DATE OF DECISION: 28.07.2023

RAJWINDER SINGH

... Petitioner (s)

Versus

STATE OF UT AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Parveen Chauhan, Advocate
Mr. G.S. Wasu, Advocate the petitioner(s).

Mr. Y.S. Rathore, Addl. PP, UT, Chandigarh assisted by
Mr. Yuvraj Rathore, Advocate

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner has impugned the order dated 31.10.2022
(Annexure P-6) whereby his case for premature release has been declined.

2. Learned counsel for the petitioner submits that the petitioner has undergone a sentence of over 4 years and 3 months out of the total sentence of 7 years. He had been convicted in three cases and sentenced to undergo rigorous imprisonment for a period of 7 years and while dismissing the appeal preferred by the petitioner bearing Criminal Appeal No.282-SB of 2002, this Court had directed that all the sentences would run concurrently. He also submits that the case of the petitioner has been rejected in a mechanical manner without following the parameters laid down by the Supreme Court in the case of **Laxman Naskar Vs. Union of India, (2000) 2 SCC 595**.

3. Custody certificate filed by the learned State counsel is taken on

record which indicates that the petitioner has undergone a sentence of 04 years, 3 months and 2 days including remission out of the sentence of 7 years. Learned counsel for the respondent, however, submits that the petitioner had committed serious offences and, therefore, his case had been rightly rejected. The petitioner was a police officer and was involved in three cases of dacoity and had been convicted in all of them. He also submits that the case of the petitioner had been rejected by a well –reasoned order. He has relied upon the judgment of the Supreme Court in the case of **Union of India Vs. Sriharan @ Murugan, (2014) 4 SCC 242** wherein it has been held that the order of remission or premature release has to be guided by the opinion of the trial Court.

4. Heard. The petitioner has been convicted in case bearing FIR No.5 dated 03.01.1995 under Sections 392, 397, 452 & 34 IPC, Police Station South Chandigarh; FIR No.54 dated 09.05.1995, under Sections 392, 397, 452 & 34 IPC, Police Station North Chandigarh and FIR No.264 of 1995, under Sections 392, 397, 452 & 34 IPC, Police Station Sector 17, Chandigarh and sentenced to undergo rigorous imprisonment for a period of 7 years. He had preferred an appeal bearing Criminal Appeal No.282-SB of 2002 and this Court by the judgment dated 05.01.2012 had directed that all the sentences would run concurrently. The petitioner has undergone a sentence of over 4 years. He is seeking consideration of his case for premature release in terms of Section 432 Cr.P.C. The Supreme Court in the case of **Laxman Naskar Vs.**

Union of India (supra) had laid down the following parameters to be considered while considering the case for premature release under Section 432 Cr.P.C. These parameters are reproduced hereunder:

- (a) Whether the offence is an individual act of crime that does not affect the society;
- (b) Whether there is a chance of the crime being repeated in future;
- (c) Whether the convict has lost the potentiality to commit crime;
- (d) Whether any purpose is being served in keeping the convict in prison; and
- (e) Socio-economic conditions of the convict's family."

5. A perusal of the impugned order (Annexure P-6) indicates that an opinion has been rendered by the trial Court that from the perusal of the charge sheets and the judgments, the premature release would not serve any good purpose. The operative part of the order is reproduced hereunder:

"Thus, his antecedents, as revealed from the perusal of the charge sheets and judgements do not impel this court to opine in his favour regarding his premature release. In the considered opinion of this court, his premature release will not serve any good purpose.

Keeping in view the gravity and seriousness of the offence committed by him, convict Rajwinder is not entitled for any clemency. Hence, clemency under Section 432 of the Cr.P.C. is not approved."

6. It is evident that besides relying upon the charge sheets and judgments of the conviction, the Presiding Judge has not considered other

relevant factors as set out by the Supreme Court in the case of **Laxman Naskar Vs. Union of India (supra)**.

7. The Supreme Court in the case of **Ram Chander Vs. The State of Chhattisgarh and another, 2022 (2) RCR (Criminal) 839** had relied on the judgment in the case of **Laxman Naskar Vs. Union of India (supra)** and held that the cases of premature release have to be considered by keeping in view the relevant material including parameters laid down by the Supreme Court in the case of **Laxman Naskar Vs. Union of India (supra)**. It was also held that it is enjoined on the competent authority to act in a fair and reasonable manner while making an informed decision.

8. Consequently, the petition is allowed and the impugned order dated 31.10.2022 (Annexure P-6) is set aside. The case of the petitioner for premature release would be reconsidered. The Presiding Judge shall furnish his opinion within a month of the date of this order after taking into consideration the law laid down by the Supreme Court in **Laxman Naskar Vs. Union of India (supra)** and **Ram Chander Vs. The State of Chhattisgarh and another (supra)**. The competent authority shall take a final decision on the application of the petitioner for premature release within a month of receiving the opinion of the Presiding Judge.

(ANUPINDER SINGH GREWAL)
JUDGE

28.07.2023

SwarnjitS	Whether speaking/reasoned	:	Yes / No
	Whether reportable	:	Yes / No