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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRWP-4466-2023 (O&M)
Date of decision: 13.12.2023**

Suresh Chand

....Petitioner

Versus

U.T. Administration Chandigarh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Gourav Verma, Advocate
for the petitioner.

Mr. Rajiv Vij, Addl.P.P., U.T. Chandigarh for
Mr. C.S. Bakshi, Addl.P.P., U.T. Chandigarh
for respondents No.1 to 3.

Mr. R.K. Ambavta, A.A.G., Haryana.

Mr. Jasdev Singh Mehndiratta, Advocate
for respondent No.8.

PANKAJ JAIN, J. (ORAL)

Present criminal writ petition is directed against order dated 06.04.2023 passed by respondent No.5, whereby the application filed by petitioner seeking premature release has been ordered to be deferred for 2 years relying upon the recommendation made by the State Level Committee.

2. Petitioner stands convicted for offence punishable under Section 302 IPC read with Section 25 of the Arms Act in FIR No.255 dated 01.09.2002, registered under Sections 302, 307 IPC read with Section 34 IPC and Section 25 of the Arms Act at Police Station City Sonipat.

2.1. Incident relates to Police Station City Sonipat but the trial was transferred from Sonipat in Haryana to Union Territory of Chandigarh by the orders passed by the Apex Court. The offence relates to an incident in which the petitioner murdered three boys. The conviction of the petitioner stands affirmed till Supreme Court. The petitioner was sentenced as under:-

Under Section 302 IPC	Life imprisonment and fine Rs.3 lakh or to undergo R.I. for three years in default of payment of fine.
Under Section 25 Arms Act for the incident of 1.9.2002	To undergo R.I. for 5 years and to pay a fine of Rs.5000/- or to undergo further R.I. for a period of one year in default of payment of fine.
Under Section 25 Arms Act for the incident of 7.9.2002	To undergo R.I. for 5 years and to pay a fine of Rs.5000/- or to undergo further RI for a period of one year in default of payment of fine.

2.2. However, by way of order dated 17.12.2021 passed by this Court in CRM-M No.48159 of 2021 the sentences were ordered to run concurrently. Petitioner moved an application seeking premature release before authorities of Union Territory Chandigarh. The same was rejected by the Administrator, U.T. Chandigarh after obtaining opinion from the Additional Sessions Judge, Chandigarh as required under Section 432(2) of the Code. The order has been placed on record by respondent No.8 as Annexure R-8/1. The relevant portion thereof reads as under:-

“xxxx xxxx xxxx

And whereas, in term of Section 432(2) of Code of Criminal Procedure, 1973, the case of convict Suresh Chand, S/o Shri Dhoop Singh was also referred to the Additional Sessions Judge, Chandigarh for obtaining opinion whether the premature release of the said convict should be granted or

refused, who tendered his opinion in detail, vide which he has concluded that the Law is well settled that while taking decision of premature release, the appropriate Government has to take note of the fact whether the offence is an individual act of crime without effecting the society at large. The present case relates to murder by the convict who has been held guilty and accordingly sentenced for committing the said ghastly crime which, therefore, was not an individual act of crime having no effect on the society at large, crime was such which created fear among the society and thus having grave effect upon the fabric of the society, hence, convict is not entitled for premature release as doing so will give wrong signal to the society.

And whereas, the opinion of Additional Sessions Judge, UT Chandigarh has been gone through, which clearly show that the crime committed by convict Suresh Chand, S/o Shri Doop Singh, was such which created fear among the society and thus having grave effect upon the fabric of the society, therefore, he is not entitled for premature release as doing so will give wrong signal to the society.

Hence, considering the totality of facts, the undersigned, do not find it a fit case, wherein, the concession of premature release can be given as his premature release will give wrong signal to the society. Consequently, his prayer for premature release is declined.

xxxx xxxx xxxx”

2.3. Petitioner thereafter applied for premature release to the State of Haryana through Superintendent, Model Jail, Chandigarh. This Court vide order dated 27.10.2022 passed in CRWP No.10149 of 2022 directed the State to consider the case of the petitioner for premature release. During the

pendency of the said petition, the impugned order dated 06.04.2023 (Annexure P-10) was passed and the petitioner is before this Court assailing the said order.

3. On being asked as to how the application filed by petitioner seeking premature release was maintainable before the authorities of State of Haryana keeping in view the provisions of Section 432 of the Code, counsel for the petitioner has relied upon orders passed by Apex Court in Writ Petition (Cri.) No.135 of 2022, titled as ***RADHESHYAM BHAGWANDAS SHAH @ LALA VAKIL Vs. STATE OF GUJARAT AND OTHERS, Decided on 13.05.2022***, to submit that premature release case of the convict is to be decided by the State Govt. in which the crime was committed and not by the State where trial stands transferred and concluded.

4. On the other hand, counsel for respondent No.8 has relied upon Constitution Bench judgment of Supreme Court in the case of ***Union of India vs. V. Sriharan @ Murugan, 2016(7) SCC 1*** to submit that the present application filed by petitioner itself was totally misconceived and the claim of the petitioner, if any, for premature release has to be adjudicated by the authorities of Union Territory Chandigarh and not by the State of Haryana.

5. Having heard rival contentions of the counsels representing the parties, in the considered opinion of this Court, the short question that arises is that "*In a situation where offence is committed in one State and the trial stands transferred to other State and order of sentence has been passed and*

executed in the transferred State, which State would be the appropriate Government?”

6. It will be apposite to peruse Section 432 of the Code which reads as under:-

432. Power to suspend or remit sentences:

(1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed, to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by

any other person on his behalf shall be entertained, unless the person sentenced is in jail, and--

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a Criminal Court under any section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this section and in section 433, the expression "appropriate Government" means,---

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed."

7. Section 432 of the Code has been interpreted by the Constitution Bench of the Supreme Court in the case of V. Sriharan's case (supra), wherein delivering majority judgment Justice F.M. Ibrahim Kalifulla, J. held as under:-

“xxxx xxxx xxxx

175. For our present purpose, we can apply the above principles to the cases which come up for consideration, including the one covered by the bvpresent writ petition. Having made our detailed analysis as above on the various questions, we proceed to answer the questions in seriatim.

xxxx xxxx xxxx

Questions 52.3, 52.4 and 52.5:

52.3 Whether Section 432(7) of the Code clearly gives primacy to the Executive Power of the Union and excludes the Executive Power of the State where the power of the Union is coextensive?

52.4 Whether the Union or the State has primacy over the subject-matter enlisted in List III of the Seventh Schedule to the Constitution of India for exercise of power of remission?

52.5 Whether there can be two appropriate Governments in a given case under Section 432(7) of the Code?

Answer

180. The status of appropriate Government whether the Union Government or the State Government will depend upon the order of sentence passed by the criminal court as has been stipulated in Section 432(6) and in the event of specific Executive Power conferred on the Centre under a law made by Parliament or under the Constitution itself then in the event of the conviction and sentence covered by the said law of Parliament or the provisions of the Constitution even if the Legislature of the State is also empowered to make a law on the same subject and coextensive, the appropriate Government will be the Union Government having regard to the prescription contained in the proviso to Article 73(1)(a) of the Constitution. The principle stated in the decision in G.V. Ramanaiah [G.V. Ramanaiah v. Supt. of Central Jail, (1974) 3 SCC 531] should be applied. In other words, cases which fall within the four corners of Section 432(7)(a) by virtue of specific Executive Power conferred on the Centre, the same will clothe the Union Government the primacy with the status of appropriate Government. Barring cases falling under Section 432(7)(a), in all other cases where the offender is sentenced or the sentence order is passed within the territorial jurisdiction of the State concerned, the State Government would be the appropriate Government.

xxxx xxxx xxxx”

8. Mandate is unambiguous. The present case relates to Section 432(7) (b). Order of sentence against the petitioner was passed by Sessions Judge, Chandigarh. He is serving sentence in U.T. Chandigarh. Thus, in the present case, the appropriate Government is the Union Territory Chandigarh and not the State of Haryana. Resultantly, it is the authorities of Union Territory Chandigarh who have to consider and decide the application of the petitioner seeking premature release.

9. In the present case, no challenge has been raised to the order passed by the Administrator, U.T. Chandigarh rejecting the claim of the petitioner for premature release.
10. Consequently, the present petition is dismissed as the application moved to the State of Haryana itself was not maintainable. However, liberty is granted to the petitioner to raise appropriate challenge to the order passed by the Union Territory Chandigarh.
11. Pending application(s), if any, shall also stand disposed off.

(PANKAJ JAIN)
JUDGE

December 13, 2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No