

In The High Court for the States of Punjab and Haryana
At Chandigarh

CRWP-11615-2022 (O&M)
Date of Decision:- 20.02.2023

Gurmeet Singh ... Petitioner

Versus

Union Territory Chandigarh and others ... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Vijay K. Jindal, Advocate, for the petitioner.

Mr. B.R.Rana, Advocate, for
Mr. J.S.Toor, Advocate, APP, U.T. Chandigarh.

GURVINDER SINGH GILL, J. (Oral)

- 1. The petitioner assails order dated 31.10.2022 vide which his case for grant of premature release had been declined.
- 2. The petitioner was tried for offences under Sections 302, 307 read with Section 120-B IPC and Sections 3 and 4 of the Explosive Substances Act, arising out of FIR No. 96, dated 31.8.1995, Police Station North now Sector 3, Chandigarh and was held guilty vide judgment dated 31.7.2007, passed by learned Additional Sessions Judge, Chandigarh and was sentenced as follows:

Sr. No.	Under Section	Sentence
1	302 r/w 120-B IPC	Imprisonment for life and to pay a fine of Rs. 10,000/-, and in default of payment of fine to further undergo simple imprisonment for three years.
2	307 r/w 120-B IPC	R.I for 10 years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of three years.

3	306 r/w 109 r/w S.120-B IPC	R.I for 10 years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of three years.
4	3(b) r/w S.6 of Explosive Substances Act.	R.I for life and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of three years.
5	4(b)(i) r/w S. 6 of Explosive Substances Act	R.I for 10 years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of three years.
6	5(b) r/w S. 6 of Explosives Substances Act	R.I for 10 years and to pay a fine of Rs.5,000/- and in default of payment of fine, to further undergo simple imprisonment for a period of three years.

3. Learned counsel for the petitioner submits that the petitioner as on date has undergone an actual sentence of more than 25 years and has also earned remissions to the tune of about 6 years and 9 months and as such is entitled to be released prematurely in terms of the provisions of para No.431 of Punjab Jail Manuel, 1996 (as adopted by U.T. Chandigarh vide notification dated 2.4.1997 Annexure P-5).
4. Being aggrieved by the order of rejection, the petitioner approached this Court by way of filing CRWP-8632-2021 which was disposed of vide order dated 6.10.2021 while passing the following order:

“CRM-W-1213-2021

This is an application for placing on record additional document i.e. Correction slip No.184 in Punjab & Haryana High Court Rules & orders dated 25.11.2019 as Annexure P-11.

For the reasons recorded, the application is allowed and the document is taken on record.

Main case

This is a petition for habeas corpus directing the respondents to consider the release of the petitioner on account of the fact that he has undergone actual imprisonment of 25 years, 08 months and 22 days.

On advance notice, Mr. J.S. Toor, APP, UT has entered appearance on behalf of the respondents and has accepted this fact.

Counsel for the petitioner states that the petition of the petitioner be considered as a representation and the same may be considered within two months.

In the circumstances, the petition stands disposed of with a direction to the respondents to re-consider the claim of the petitioner in accordance with law within a period of two months from the date of receipt of certified copy of this order by passing a speaking order.

Since the main case has been decided, the pending Criminal Misc. Application, if any, also stands disposed of.”

5. Pursuant to passing of order dated 06.10.2021, the case of the petitioner had been reconsidered and again declined vide impugned order dated 31.10.2022. The operative portion of the said order reads as follows:

“And whereas, the District Magistrate, Patiala, Punjab vide his letter dated 23.09.2022 has not recommended the premature release of the convict Gurmeet Singh, S/o Shri Jaswinder Singh.

And whereas, the opinion of District and Sessions Judge, UT Chandigarh has opined that no grounds are made out to for premature release of prisoner Gurmeet Singh, S/o Shri Jaswinder Singh

Now, therefore, considering the totality of facts, the undersigned, do not find it a fit case, wherein, the concession of premature release can be given to convict Gurmeet Singh, S/o Shri Jaswinder Singh. Consequently, the prayer for premature release is declined.”

6. A perusal of the aforesaid operative portion shows that both the District Magistrate, Patiala as well as District and Sessions Judge U.T. Chandigarh have simply stated that no grounds are made out for premature release of the prisoner Gurmeet Singh and have not assigned any reason for reaching at such conclusion. Hon'ble the Apex Court in a recent judgment Ram Chander Vs. State of Chhattisgarh and another, 2022(2) RCR (Criminal) 839 has held that opinion of the Presiding Judge in terms of Section 432 (2) Cr.P.C. requires the same to be accompanied by valid reasons. The relevant extract from the said judgment reads as follows:

“23. In his opinion dated 21 July 2021 the Special Judge, Durg referred to the crime for which the petitioner was convicted and simply stated that in view of the facts and circumstances of the case it would not be appropriate to grant remission. The opinion is in the teeth of the provisions of Section 432 (2) of the CrPC which require that the presiding judge's opinion must be accompanied by reasons. Halsbury's Laws of India (Administrative Law) notes that the requirement to give reasons is satisfied if the concerned authority has provided relevant reasons. Mechanical reasons are not considered adequate. The following extract is useful for our consideration:

“[005.066] Adequacy of reasons-Sufficiency of reasons, in a particular case, depends on the facts of each case. It is not necessary for the authority to write out a judgement as a court of law does. However, at least, an outline of process of reasoning must be given. It may satisfy the requirement of giving reasons if relevant reasons have been given for the order, though the authority has not set out all the reasons or some of the reasons which had been argued before the court

have not been expressly considered by the authority. A mere repetition of the statutory language in the order will not make the order a reasoned one.

Mechanical and stereotype reasons are not regarded as adequate. A speaking order is one that speaks of the mind of the adjudicatory body which passed the order. A reason such as 'the entire examination of the year 1982 is cancelled', cannot be regarded as adequate because the statement does explain as to why the examination has been cancelled; it only lays down the punishment without stating the causes therefor."

24. Thus, an opinion accompanied by inadequate reasoning would not satisfy the requirements of Section 432 (2) of the CrPC. Further, it will not serve the purpose for which the exercise under Section 432 (2) is to be undertaken, which is to enable the executive to make an informed decision taking into consideration all the relevant factors.
25. In view of the above discussion, we hold that the petitioner's application for remission should be re-considered. We direct the Special Judge, Durg to provide an opinion on the application afresh accompanied by adequate reasoning that takes into consideration all the relevant factors that govern the grant of remission as laid down in Laxman Naskar v. Union of India (supra). The Special Judge, Durg must provide his opinion within a month of the date of the receipt of this order. We further direct the State of Chhattisgarh to take a final decision on the petitioner's application for remission afresh within a month of receiving the opinion of the Special Judge, Durg."

(emphasis supplied)

7. The impugned order when examined in light of the ratio rendered in Ram Chander's case (Supra), certainly cannot sustain being a non-speaking order, as the opinion as referred therein does not disclose any reason. The impugned order, as such, is set aside and the authorities concerned are directed to consider the matter afresh, after soliciting opinion of Sessions Judge concerned, expeditiously preferably within a period of 3 months from today.

20.02.2023

mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No