



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

CRWP-9292-2024

Date of decision: 11.12.2024

Ashok

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Pranav Chamoli, Advocate for the petitioner.

Mr. Karan Garg, AAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner/convict under Article 226/227 of the Constitution of India seeking quashing of impugned opinion dated 10.04.2024 (Annexure P-3) given by the trial Court (the Court of Additional Sessions Judge, Jhajjar) and impugned order dated 06.08.2024 (Annexure P-5) passed by the competent authority whereby the case for premature release of petitioner a life convict was rejected and was ordered to be reconsidered after one year.

2. The counsel for the petitioner *inter alia* submits that as per sub section 2 of Section 432 of Cr.P.C, the Presiding judge of the convicting Court is to give his opinion whether the application seeking pre-mature release of convict should be granted or refused, together with his reasons for such opinion. In the instant case, the Presiding judge concerned gave his opinion Annexure P-3 to the effect that convict is not entitled for premature release. However, while giving its opinion Annexure



P-3, the Court concerned failed to assign any reasons, as is mandatory, as per the law laid down by Hon'ble Supreme Court in Writ Petition (Crl.) No.491 of 2022 titled as ***Bilkis Yakub Rasool Vs. Union of India and others***, decided on 08.01.2024. It is further submitted that as the opinion Annexure P-3 is not in consonance with the mandate of Section 432 (2) Cr.P.C, the subsequent order Annexure P-5 passed by the competent authority is also not sustainable.

3. The present petition is resisted by the State counsel who submits that the Presiding officer concerned gave its opinion in accordance with law and there is no perversity in the same. It is further submitted that the impugned order Annexure P-5 is also passed by the competent authority in accordance with law after considering the entire facts and circumstances of the case and the competent authority gave further direction that the case of the petitioner will be reconsidered after one year.

4. I have considered the submissions made by counsel for the parties.

5. The Hon'ble Supreme Court in ***Bilkis Yakub Rasool's case*** (supra) while referring to ***Union of India Vs. V. Sriharan (2016) 7 SCC 1*** and ***Sangeet Vs. State of Haryana (2013) 2 SCC 452***, observed that the suo motu power of remission cannot be exercised under Section 432 (1) of Cr.P.C and it can only be initiated based on an application of the person convicted under Section 432 (2) Cr.P.C and the ultimate order of remission should be guided by the opinion to be rendered by the Presiding officer of the Court concerned.

6. The Hon'ble Supreme Court in Writ Petition (Crl.) No.49 of



2022 titled ***Ram Chander Vs. State of Chhattisgarh***, decided on 22.04.2022, observed as follows:-

“21. However, this is not to say that the appropriate government should mechanically follow the opinion of the presiding judge. If the opinion of the presiding judge does not comply with the requirements of Section 432 (2) or if the judge does not consider the relevant factors for grant of remission that have been laid down in Laxman Naskar v. Union of India (supra), the government may request the presiding judge to consider the matter afresh.”

7. Now reverting back to the facts of the present case, the opinion Annexure P-3 given by the Presiding judge of the Court concerned, reads as follows:-

“Kindly refer to your office letter No. 1828 dated 28.03.2024 on the above noted subject. As per the aforesaid letter, convict No.1101/C Ashok son of Attar Singh, age about 44 years, resident of village Matan, P.S. Assaudha, District Jhajjar is eligible for considering premature release per the directions issued by the Hon'ble Supreme Court of India vide writ petition (Crl.) No. 491 of 2022 in the case titled as Bilkis Yakub Rasool V/s Union of India & others vide order dated 08.01.2024. The accused Ashok was convicted by the learned Court of Sh. D. D. Yadav, the then Ld. Additional Sessions Judge, Jhajjar in case FIR No.256 dated 22.09.1999 under Sections 302 of IPC, P.S. Sadar Bahadurgarh and was sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.5000/-. In default of payment of fine, convict shall further undergo rigorous imprisonment for 6 months. (Fine not paid). The said convict preferred CRA No. CRA-D-108-DB of 2003 in the Hon'ble Punjab and High Court, Chandigarh against the above noted judgement of the learned Trial Court which was dismissed vide order dated 12.01.2015.

Judgement dated 16.01.2003 passed by Sh. D. D. Yadav, the then Ld. Additional Sessions Judge, Jhajjar perused.

In the above letter, Superintendent District Jail, Jhajjar also stated that the conduct of Ashok inside the jail is good and there is no other criminal record against the above said convict as per Jail Record the convict Ashok has still not pay the fine of Rs.5000/- imposed on him vide judgement dated 16.01.2003.

Therefore, this Court is of the view that convict is not entitled for premature release.”

8. The aforesaid opinion Annexure P-3, given by the Presiding judge concerned is not supported by any reasoning, as to satisfy the requirement of Section 432 (2) Cr.P.C. Mechanical and stereo type reasons are not regarded as adequate, as has been observed by the Hon'ble Supreme



Court in *Ram Chander's case (supra)*.

9. The opinion Annexure P-3 being not accompanied by adequate reasoning, is not legally sustainable.

10. In light of the above discussion, this Court is of the view that the case of the petitioner seeking remission requires to be reconsidered. The Presiding judge concerned is to provide an opinion on the application moved by the petitioner seeking his premature release, afresh and the said opinion should be supported by adequate reasoning that takes into consideration all the relevant factors that govern the premature release cases of the convicts. The Presiding judge concerned must provide his opinion within a month of the date of receipt of this order. It is further directed that the State of Haryana is to take final decision on the application filed by the petitioner seeking his premature release, afresh within a month of receiving the opinion of the Presiding judge concerned.

11. The present petition is allowed in aforesaid terms.

11.12.2024

Yogesh

**(KARAMJIT SINGH)
JUDGE**

Whether speaking/reasoned:-

Whether reportable:-

Yes/No

Yes/No