

---

**(1995) 10 P&H CK 0009**

**In the Punjab And Haryana At Chandigarh**

**Case No : Criminal Miscellaneous No. 13599-M of 1995**

Bachan Singh

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

---

**Date of Decision : 13-10-1995**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Criminal Procedure Code, 1973 (CrPC) — Section 433A, 482  
Penal Code, 1860 (IPC) — Section 302, 324, 34

**Citation :** (1996) CriLJ 1612 : (1996) 1 RCR(Criminal) 140

**Hon'ble Judges :** Sarojnei Saksena, J

**Bench :** Single Bench

**Advocate :** P.C. Chaudhary, for the Appellant; Neena Madan, AAG, for the Respondent

**Final Decision :** Allowed

---

## **Judgement**

Sarojnei Saksena, J.—The petitioner has filed this petition u/s 482 Cr.P.C. and under Articles 226/ 227 of the Constitution for directing the respondents to initiate and decide his premature release case.

2. The petitioner along with his brother and one co-accused were involved in a murder case. He was arrested on August 4, 1985, and ultimately was convicted and sentenced u/s 302/34 IPC to undergo life imprisonment with a fine of Rs. 100/- and also u/s 324/34 IPC to undergo rigorous imprisonment for three months by judgment dated September 12, 1986. The appeal was dismissed by the High Court. According to the petitioner; up till now he has undergone actual sentence till July 31, 1995, of 9 years 11 months and 28 days, which includes under trial period of 1 years 1 month and 8 days and actual sentence period of 8 years 10 months and 20 days. He has earned remissions of 5 years and six months. Thus, according to the petitioner, he has undergone total sentence of 15 years 5 months and 28 days uptill end of July 1995. The State of Haryana has issued statutory instructions dated February 4, 1993, Annexure P-2, to grant

premature release to life convicts. According to the petitioner, his case falls under para 2(b) of these instructions. Though his case is ripe for consideration under para 2(b) of the said instructions, respondent No.3 has declined to initiate his premature release case wrongly and illegally. It is also contended that he is not convicted of any jail offence. During his confinement he has acquired additional educational qualifications of Gyani, Prabhakar and has cleared B.A. Part-II examination as well. There is no male member to look after his family which consists of his ailing mother, wife and minor daughter and sons. It is further averred that he was on parole for a period of 1 year, 5 months and 15 days. This period is also to be counted towards the total period of actual sentence undergone by him. Hence it is prayed that the respondents be directed to consider his case of premature release under para 2(b) of the said instructions.

3. The respondents in their reply have raised certain preliminary objections and have inter alia pleaded that life sentence is nothing less than life term. The main contention is that the period for which the petitioner was on parole cannot be counted as sentence undergone and till he undergoes actual sentence of 14 years, his case for premature release cannot be considered. It is also objected that his case falls under para 2(b) of the said instructions and on this count also till he completes 14 years actual sentence including under-trial period and after earning at least 6 years remissions, his case cannot be considered.

4. So far as the point whether petitioner's case falls under para 2(a) of para 2(b) of the said instructions is concerned, from a bare reading of the judgment Annexure P-1, it is evident that on account of the raising of a wall and reducing the width of the road, a dispute arose between the complainant party and the accused persons, whereupon the petitioner gave a spear blow to Bagicha Singh on his chest. Co-accused also belaboured him with Lathi and Barchhi blows. Bagicha Singh succumbed to the injuries. Hence it cannot be said to be a heinous crime as defined in para 2(a) of the said instructions. For taking this view I am supported by two judgments of this Court in Darshan Singh v. State of Haryana 1995 (1) Re CR 134 and Raja v. The Government of Haryana 1995 Rec CR 634. Thus, I find that the petitioner's case does not fall under para 2(a) of the said instructions. Rather it falls under para 2(b) of the said instructions.

5. No doubt, in Charanjit Lal v. State 1985 (2) CLR 89 and in Amar Singh v. State of Punjab 1984 (1) CLR 547 it is held that the period of release of a prisoner on parole cannot be computed towards total period of his imprisonment, but a Division Bench of Himachal Pradesh High Court in Life convict Karam Singh v. State of Himachal Pradesh. 1994(2) Rec CR 28 has held that period of parole is to be counted for actual period of 14 years' imprisonment to be served by a prisoner u/s 433A Cr. P.C. The Division Bench considered the Apex Court judgment given in Ashok Kumar alias Golu Vs. Union of India and others, and Maru Ram and Others Vs. Union of India (UOI) and Others, , and also referred to a decision of Madhya Pradesh High Court in Babu Pahelwan v. State of M.P., 1990 Criminal Law Journal 2704. In all these cases it is held that the expression

"person" and "imprisonment" must receive a wider connotation and include any place notified as such for detention purposes. Stone walls and iron bars do not make a prison, nor are they sine qua non to make a jail. When a prisoner is released on parole it is a licensed enlargement on certain conditions. He is not a free bird. If he violates any condition of the order of parole, he is bound to be rearrested and committed to prison again to serve out his remaining sentence. Hence it cannot be said that the parole period is not to be counted for the actual period of 14 years" imprisonment to be served by the petitioner.

6. In view of above legal position, the petition is hereby allowed. The respondents are directed to consider the petitioner's case for granting him premature release as his case squarely falls under para 2(b) of the said instructions. The respondents are directed to consider petitioner's case within two months by passing a well reasoned and speaking order, which should be conveyed to the petitioner forthwith.