

(2008) 03 P&H CK 0206

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1305 of 2007

Bhim Singh and others

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 433A
Penal Code, 1860 (IPC) — Section 148, 149, 302, 324, 326

Citation : (2008) 2 RCR(Criminal) 945

Hon'ble Judges : H.S. Bhalla, J

Bench : Single Bench

Advocate : V.S. Rana, for the Appellant; Ashok Jindal, A.A.G., Haryana, for the Respondent

Judgement

H.S. Bhalla, J.—Through this Criminal Writ Petition filed under Article 226 of the Constitution of India, the petitioners have prayed for grant of pre- mature release on usual terms and conditions, in view of the orders Annexures P-2 and P-3 passed by this Court.

2. Learned counsel appearing for the petitioners has strenuously urged that the case of the petitioners for premature release has to be considered in the light of the decision rendered by this Court in the case of Bhup Singh v. State of Haryana and others Criminal Writ Petition No. 284 of 2007, decided on 13.7.2007, a copy of which is annexed with the petition as Annexure P-3. Learned counsel has further contended that in view of the judgment dated 24.7.2003 passed by this Court, the petitioners" case has to be considered for release on expiry of 10 years of actual sentence and 14 years of sentence including remissions. Learned counsel has further contended that since the petitioners have completed requisite sentence, their further detention in jail is illegal and that they deserve to be released in view of the judgments passed by this court.

3. On the other hand, learned State counsel has brought to the notice of this

court that the convicts who have been sentenced for life for committing murder of more than two persons, their cases are to be considered after completion of 20 years actual sentence and 25 years total sentence. Learned counsel has further contended that as per the custody certificate, the petitioners have not completed their 20 years actual sentence and 25 years total sentence with remissions and as such, they are not liable to be released as per the policy dated 12.4.2002 framed by the State Government.

4. Having heard learned counsel for the parties and going through the record of the case, I am of the considered view that the petition filed by the petitioners has got merit and the same is liable to be accepted for the reasons to be recorded hereinafter.

5. It is an admitted case of the parties that vide judgment dated 5.9.1997 of the Additional Sessions Judge, Rohtak, the petitioners were convicted u/s 302/324/326/148 and 149 of the Indian Penal Code and sentenced to life imprisonment for having committed murder of more than two persons. All the sentences were ordered to run concurrently.

As per the government instructions dated 12.4.2002 (Annexure P-1), their case fall in the category "heinous crimes" under clause (aa) of the Instructions as murder of more than two persons was involved and therefore, according to the instructions, they could be considered for pre-mature release after completion of 20 years" actual imprisonment and 25 years imprisonment, including remissions. The policy was challenged through Criminal Misc. No. 30109-M of 2002, which was finally heard and decided on July 24, 2003, wherein it was observed that the petitioner is entitled for consideration of his case for grant of premature release on the expiry of 10 years actual sentence and 14 years sentence including remissions. Since the petitioner has undergone more than 10 years actual sentence and 14 years sentence including remissions on or before July 2003, it was held by this court that detention of the petitioner is violative of Articles 14, 19 and 21 of the Constitution. It is clearly evident that there is no rationality in categorizing the persons who had committed one murder or who had committed more than two murders. The contention of the learned counsel appearing for the petitioners that the policy of the Haryana Government that if the convict is involved in the murder of more than two persons, his case has to be considered for premature release after completion of 20 years actual sentence and 25 years total sentence with remissions is discriminatory and violative of Articles 14, 19 and 21 of the Constitution is countenanced by this court in view of the judgment dated July 24, 2003 rendered in Criminal Misc. No. 30109-M of 2002, the operative part of which reads as under:-

"Consequently, in view of the discussion above, the petition is accepted and the petitioners are entitled for consideration of their cases for grant of pre-mature release on the expiry of 10 years of actual sentence and 14 years of sentence including remissions and their further detention, without consideration of their cases, is violative of Articles 14, 19 and 21 of the Constitution of India."

6. It is however apt to mention here that this judgment was challenged by the State of Haryana by filing petition for Special Leave to Appeal (Criminal) No. 1488 of 2004. Leave was granted in the said petition but stay of the impugned judgment dated 24.7.2003 of this Court was declined vide order dated 3.1.2005. Vide order dated 13.10.2006, the Hon''ble Supreme Court directed the State Government to consider the cases of the petitioners and other (respondents in the criminal appeal before the Hon''ble Apex Court) for pre-mature release in terms of judgment dated 24.7.2003 passed by this court, but despite that the petitioners' case is not being considered by the State Government forcing them to knock at the door of this court by filing the instant petition.

7. A perusal of the judgment dated 24.7.2003 passed by this court clearly shows that the petitioners' case has to be considered on expiry of 10 years of actual sentence and 14 years of sentence including remissions. Despite this clear direction, the respondents through their written statements, are still insisting that the case of the petitioners can be considered for pre-mature release after they complete 20 years' actual sentence and 25 years sentence including remissions.

8. In order to fortify his arguments, learned counsel has further referred to case of one Jiya Lal, who was sentenced under Sections 302 and 392 of the Indian Penal Code and as per the policy framed by the State Government, he was required to undergo 14 years of actual sentence and 20 years sentence including remissions. He filed Criminal Misc. No. 12868-M of 2003 claiming that the condition of 20 years' sentence, including remissions was arbitrary and that he was required to undergo only 14 years' actual sentence. This court had directed to release the convict during the pendency of the judgment in Anil Sharma v. State of Haryana, Writ Petition (Crl.) No. 135 of 2003 in the Hon''ble Supreme Court, wherein it was directed that no convict serving life sentence and who has not completed 14 years shall be released without further orders also reveal that the aforesaid order dated 26.9.2003 in the case of Anil Sharma was further clarified by Hon''ble Apex Court vide order dated 11.2.2005 that the order dated 26.9.2003 applied to only 9 convicts mentioned in 4.4 of the petition. It was also clarified that the stay order in Writ Petition (Criminal) No. 200 of 2003 will only mean that there shall be no violation of the provision of Section 433A of the Code of Criminal Procedure (for short "the Code"). Section 433A of the Code provides that no person sentenced with imprisonment for life for offences for which death is one of the punishments, shall be released unless he has served at least 14 years of imprisonment. Although in view of judgment dated 24.7.2003 of this court and specific direction of the Hon''ble Supreme Court vide order dated 13.10.2008, cases of the petitioners deserved to be considered for pre-mature release on completion of 10 years of actual sentence and 14 years of sentence including remissions, yet even if Section 433A of the Code is taken into consideration and the order in Writ Petition (Criminal) No. 200 of 2003 directing that there shall be no violation of Section 433A of the Code is also taken into consideration, the petitioners even in that event deserved to be released on

completion of 14 years of actual sentence. Following the direction of the Hon''ble Supreme Court, co-ordinate Bench of this Court had ordered to release the convict prematurely since he had undergone more than 14 years actual sentence. Learned counsel has further contended that the case of the petitioners is squarely covered by the decision of this court rendered in Bhoop Singh v. State of Haryana, Criminal Writ Petition No. 284 of 2007, a copy of which is annexed with Annexure P-3. I have gone through the judgment and find that the present case is fully covered by the decision rendered in the aforementioned case.

9. A perusal of the custody certificate (Annexure P-4 to P-6) clearly shows that all the petitioners in the instant case have undergone more than 17 years of actual sentence and as such, their case is squarely covered by the judgment of this court rendered in Bhoop Singh's case (supra), a copy of which is annexed with the petition Annexure P-3. Following the dictum laid down in this judgment, as referred to above, this court is of the same view that has been expressed by a co-ordinate Bench of this Court that no useful purpose would be served if the petitioners are allowed to remain in custody even after completion of 17 years of actual sentence. The contention of the learned State counsel that the petitioners are required to be served out 20 years of actual sentence and 25 years sentence, including remissions as per the policy of the Haryana Government does not find force keeping in view number of judicial pronouncements made by this court as also the direction of the Hon''ble Supreme Court in the case referred to above. On the strength of the cases as discussed above, this court is of the view that incarceration of the petitioners in the jail continuously is completely illegal and untenable and they deserve to be released from jail forthwith.

10. In the light of what has been discussed above, criminal writ petition filed by the petitioners are ordered to be released forthwith if they are not required in any other case.

Before I part with this order of mine, it is made clear that this direction is subject to final outcome of SLP (Criminal) No. 1488 of 2004 pending in the Hon''ble Supreme Court.