
(1983) 05 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 156 of 1983

Charanjit Singh

APPELLANT

Vs

Superintendent Central Jail Ludhiana and anr.

RESPONDENT

Date of Decision : 24-05-1983

Acts Referred:

Citation : (1983) 1 RCR(Criminal) 506

Hon'ble Judges : Pritpal Singh, J

Advocate : D.S. Keer, Jatui Salwan, V.K. Jindal, Advocates for appearing Parties

Judgement

Pritpal Singh, J.

1. Charanjit Singh has filed this habeas corpus petition praying that a direction be issued to the respondents to grant him parole/furlough under the Punjab Good Conduct Prisoners" (Temporary Release) Act, 1962 (hereinafter mentioned as "the Act").

2. The petitioner is undergoing life imprisonment. He applied for temporary release on parole/furlough under the Act. The Superintendent of Central Jail, Ludhiana, respondent refused to forward his application to the appropriate authority in view of his impugned order dated January 17, 1983 whereby he awarded the petitioner punishment of 12 days cutting of remission on the ground that opium was recovered from him. This order of punishment is alleged to be illegal on the plea that it was passed at the petitioner's back as he was not associated with any enquiry and no opportunity of being heard and to refuse the allegation was afforded to him. It is further contended that the impugned order is bad in law because the superintendent Jail did not obtain concurrence of the Sessions Judge.

3. In the return filed by the respondents, it is submitted that the aforesaid order of punishment was passed on confession of the petitioner in a regular enquiry held by the Superintendent Jail. It is pleaded that no concurrence of the Sessions Judge was required to impose this punishment.

4. On hearing the arguments of the learned counsel for the parties I find that the impugned order of Superintendent, Central Jail, Ludhiana is liable to be quashed on the short ground that it was passed without judicial appraisal of the Sessions Judge in violation of mandatory directions issued by the Supreme Court in *Sunil Batra v. Delhi Administration*, AIR 1980 SC 1579. One of the directions issued by the Supreme Court in this case is that no punishment or denial of privileges and amenities shall be imposed upon a prisoner without judicial appraisal of the Sessions Judge and where such intimation, on account of emergency, is difficult such information shall be given within two days of the action. The same instruction was repeated by the Supreme Court in *Rakesh Kaushik v. Superintendent, Central Jail, New Delhi*, 1990 SC Cases (Criminal) 834, observing that the action-oriented conclusions in the case of *Sunil Batra* (supra) are binding on the State and need reemphasis since dishard practices persist. In a later pronouncement in *Kishore Singh Ravinder Dev and others v. State of Rajasthan*, 1981 SCC (Crl.) 191, the Supreme Court reiterated the binding nature of the aforesaid instructions and eventually observed as follows :

"We find that the old rules and circulars and instructions issued under the Prisons Act are read incongruously with the Constitution, especially Article 21 and interpretation put upon it by this Court. We, therefore, direct the State Government of Rajasthan and indeed all the other State Governments in the country to convert the rulings of this Court bearing on Prison Administration into rules and instructions forthwith so that violation of the prisoners' freedom can be avoided and habeas corpus litigation may not proliferate."

5. In the instant case, Mr. D. S. Keer, Advocate appearing for the respondents conceded that the aforesaid mandatory instructions issued by the Supreme Court have not been complied with because the Superintendent, Central Jail, Ludhiana imposed aforesaid punishment upon the petitioner without judicial appraisal of the Sessions Judge.

6. Thus the impugned order is unsustainable and is hereby quashed. It will nevertheless be open to the authorities to take fresh proceedings in the matter in accordance with law.

JUDGMENT according.