

(2000) 05 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 40680-M of 1999

Gurvinder Singh & Angrej Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 04-05-2000

Acts Referred:

Citation : (2000) 2 RCR(Criminal) 821

Hon'ble Judges : R.L.Anand, J

Advocate : Jaspreet Singh, I.P.S. Sidhu, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. Shri Gurvinder Singh alias Angrej Singh son of Gurbachan Singh has filed the present petition under Sections 482 Cr.P.C. read with Article 226 of the Constitution of India praying that directions be given to the respondents to consider his case and release him on premature release. His case has already been recommended by the respondent No. 3 to respondent No. 1 on 26.4.1999 as per Annexure P2. He also prayed for setting aside the order dated 14.10.1999 passed by respondent No. 1, whereby his case for premature release was rejected.

2. According to the petitioner, he is undergoing life imprisonment in Central Jail, Patiala for an offence under Section 302 I.P.C. registered vide FIR No. 244 dated 14.9.1992 at Police Station Sadar Patiala. He also filed Criminal Misc. No. 27871M of 1999 in the High Court praying for his premature release as per instructions dated 8.4.1999 and in the said case the following order was passed by Hon'ble Mrs. Justice Bakhshish Kaur :

"The case of the petitioner, as per averments contained in the petition, has been recommended by Inspector General of Prisons, Punjab to the respondent No. 1 on April 26, 1999 as per Annexure P/2, but no action has been taken so far.

Disposed of with the direction that the case of the petitioner, as already

recommended as per Annexure P/2, be considered and disposed of within one month from the date of receipt of a copy of this order.

A copy of this order be sent to the respondent No. 1 i.e. State of Punjab through Secretary, Department of Home Affairs (Justice), Civil Secretariat, Chandigarh."

3. In pursuance of the said order, the case of the petitioner was considered by respondent No. 1, but was rejected. The petitioner alleges that the Punjab Government has issued various instructions/orders from time to time for the purpose of premature release. On 8.4.1999, the State Govt. took a decision for premature release on the occasion of tricentenary of Khalsa birth vide order dated 8.4.1999, in which it has decided to release the life prisoners who were below 20 years at the time of commission of offence and have undergone actual sentence for more than 51/2 years and with remission more than 10 years. The Government further gave one year special remission to the prisoners. The petitioner alleges that at the time of the commission of offence he was below 18 years and in support of this contention he has also placed on record copy of his school certificate regarding his date of birth as Annexure P3, which shows that he was born on 18.4.1975. According to the petitioner, he was arrested on 19.9.1992 and was convicted and sentenced on 9.12.1994. On 8.4.1999 he was undergone 6 years 6 months and 19 days actual sentence. Apart from that, he was granted remission of 7 years 7 months and 2 days as on 8.4.1999. Since the State Government has grants special remission for one year on the occasion of Khalsa Birth Tricentenary, therefore, he is eligible to be considered for premature release. According to the petitioner, he has undergone 15 years 6 months and 26 days including remissions and special remissions. It is further alleged by the petitioner, that his case has already been recommended to respondent No. 1 for necessary orders by the jail authorities, but the same has been rejected solely on the ground that he is guilty of heinous crime as it was murder with attempt to rape and as such it does not fall under one time instructions dated 8.4.1999. The petitioner further stated that he was convicted under Section 302 I.P.C. and was never convicted under Section 376 read with Section 511 I.P.C. His conduct in the jail excellent and he did not commit any jail offence and in these circumstances the order vide which his premature case has been declined is illegal.

4. Notice of the petition was given to the respondents, who filed reply and denied the allegations. According to the respondents, the request of the petitioner was considered but the same was rejected on the ground that he has not undergone the requisite sentence of 8 years imprisonment. The case of the petitioner was considered under the instructions dated 8.7.1991 and as per these instructions the petitioner being more than 18 years of age was required to undergo 8 years to be eligible for premature release. As per the jail roll issued on 26.4.1999 the petitioner has only undergone 6 years 7 months and 3 days actual sentence and thus he was not fulfilling the condition of actual imprisonment. It was also maintained by the respondents that the petitioner could not claim as of right his

premature release. The order Annexure P2 vide which his release case was declined has been passed in accordance with law.

5. Both the parties have placed certain documents on the file and I am disposing of this petition with the assistance rendered by Shri Jaspreet Singh, learned counsel for the petitioner and Shri I.P.S. Sidhu, learned AAG, who appeared on behalf of the respondents.

6. The first point for determination would be about the date of birth of the petitioner so as to determine his age on the date of the commission of the crime. The crime was allegedly committed on 14.9.1992. As per the school certificate the date of birth of the petitioner is 18.4.1975. This clearly shows that the petitioner was less than 18 years at the time of the commission of offence. There is no rebuttal to this document.

7. The case of the petitioner for premature release has been declined mainly on the ground that he has committed a heinous offence. In this context it will be proper for me to refer to the order Annexure R1 dated 14.10.1999 passed by the State Government, which reads as under :

"Whereas the premature release case of conviction has been considered under the Punjab Government instructions dated 8.7.91. As per these instructions, convict Gurminder Singh is guilty of heinous crime as it was murder with attempt to rape as is clear from judgment of the Court and is required to undergo 8 years actual sentence being below 20 years of age to be eligible for consideration for premature release."

The stand taken up by the respondents that the petitioner has committed heinous crime is not sustainable because a reference to the judgment passed by the trial Court would show that the petitioner was only convicted for the offence under Section 302 I.P.C. He was not convicted under Section 376 or under Section 376 read with Section 511 I.P.C. The instructions dated 8.4.1999 Annexure P4 further shows that under category A(ii) a female prisoner or male prisoner who was below 20 years at the time of commission of offence, has undergone actual sentence for more than 5 1/2 years and with remission more than 10 years is entitled to be considered for premature release. This benefit, however, is not admissible to prisoner who is involved in ghastly murder/double murder involving extreme brutality beastality in which the prisoner has been convicted and sentenced to imprisonment for life or if he is involved in the crime connected with terrorism in the State.

8. The learned counsel appearing on behalf of the respondents submits that murder itself is a heinous offence as the life of an innocent person has been taken by the petitioner. This argument is not acceptable to the Court. It is true that there is no substitute to human life, but merely that a person has been convicted for the offence under Section 302 I.P.C., cannot be termed as heinous. In order to constitute the ingredients of heinous crime, it has to be shown by the State that the offence of murder has been committed with such extreme brutality

such as that the person was chopped off into pieces etc. The reason behind "heinous offence" is that the mode of commission of offence should be such that it may shock the conscious (conscience ?) of an individual. Single murder per se cannot be termed as heinous crime until initial factors are shown that there was perversity in the mind of the criminal in the commission of that murder. In this view of the matter, the stand taken up by the respondents in Annexure R1 cannot be sustained.

9. Since the petitioner has qualified himself and has become eligible to be considered for premature release as per the policy of the State Government as contained in Annexure P4, therefore, this writ is hereby allowed by setting aside the order Annexure R1 and directions are given to the respondents to reconsider the matter in the light of the observations made above. The necessary orders shall be passed by the State Government within three months from the receipt of the copy of this order. It is hereby clarified again that the case of the petitioner for premature release shall not be rejected on the ground that he has committed "heinous crime" by committing murder with attempt to rape as stated in the order dated 14.10.1999.

There shall be no order as to costs.