
(2014) 12 P&H CK 0158

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 1045 of 2014

Harjit Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 22-12-2014

Acts Referred:

Citation : (2015) 1 RCR(Criminal) 370

Hon'ble Judges : Muttaci Jeyapaul, J; Darshan Singh, J

Bench : Division Bench

Advocate : S.S. Rana, Advocates for the Appellant; Arshvinder Singh, Addl. Advocate General, Advocates for the Respondent

Judgement

Muttaci Jeyapaul, J.—The Writ Petition is filed by the convict Harjit Singh @ Hare Ram praying for issuance of an appropriate direction to the respondents to release the petitioner forthwith prematurely on usual terms and conditions as per the government instructions issued on 23.10.2001. Alternatively, a direction has been sought to the respondents to consider the case of the petitioner for grant of premature release in terms of the above government policy. The Writ Petitioner sought for consideration of premature release at the earliest point of time through legal notice dated 18.6.2014 issued through his lawyer Sh. Suram Singh Rana. A reply has been received from the Superintendent Open Air Jail, Nabha to the effect that the case for premature release of the convict has already been submitted to the District Magistrate, Sangrur vide his office letter No. 1381 dated 7.8.2013 and the District Magistrate has forwarded his case for premature release to the Principal Secretary, Government of Punjab, Home Affairs and Justice Department with due recommendation. The Superintendent, Open Air Jail, Nabha has also submitted in the reply dated 17.7.2014 that the premature release of the Writ Petitioner is under consideration of the Government of Punjab. Further, it has been brought to the notice of the Writ Petitioner through the aforesaid reply that the office of the Governor of Punjab has given an instruction that the cases for premature release shall not be put up before the Governor of

Punjab, if a Criminal Appeal preferred by the convict, who sought for premature release is pending disposal.

2. It was also brought to our notice that in the proceedings issued by the Principal Secretary to Governor of Punjab to the Principal Secretary to Government of Punjab, Department of Home Affairs and Justice, Chandigarh, it has been observed that in the light of the decision arrived at by the Hon''ble Supreme Court in Narayan Dutt, Manjit Singh and Prem Kumar in SLP (Civil) No. 11544 of 2008 and SLP (Civil) No. 5910 of 2011, the Governor of Punjab has instructed not to put up the cases of premature release where the convict has chosen to prefer an appeal and the same is pending disposal before the Court.

3. Learned counsel appearing for the Writ Petitioner referring to the decision passed in Harkishan Vs. Union of India and others, would submit that the judgment passed by the Hon''ble Supreme Court in the case of Narayan Dutt (supra) has no application to the prayer of the convict to release him prematurely. It is his further submission that inasmuch as the case of the petitioner has already been taken up by the Government, suitable direction may be issued to pass appropriate orders in the case of the applicant who has sought premature release.

4. The learned State counsel would submit that suitable orders will be passed by the Punjab Government on the plea for premature release sought for by the applicant.

5. On a careful perusal of the decision rendered by the Hon''ble Supreme Court in the case of Narayan Dutt (supra), it is found that it was a case where three of the convicts who preferred an appeal before the Appellate Court were found innocent by the Governor invoking his authority to grant pardon. Under such circumstances, it was held that the Governor has exceeded the power to grant pardon as he had chosen to declare the convict as innocent despite the pendency of the appeal preferred by them.

6. The above decision passed by the Hon''ble Supreme Court does not have any connection with the present case where the Writ Petitioner has sought premature release as per the government instructions found appended as Annexure P-1 dated 23.10.2001.

7. Further, just because a convict has preferred an appeal before the Appellate Forum exercising his right of appeal, his case for premature release cannot be rejected on the flimsy ground that he has preferred an appeal which is pending disposal. If the case of the convict falls squarely under the instructions issued by the Governor of Punjab for premature release, the Government has to consider the case of the convict despite the pendency of the appeal before the Court as to whether he is entitled to be prematurely released.

8. From the reply dated 17.7.2014 given by the Superintendent Open Jail, Nabha, to the legal notice issued by the Writ Petitioner, it is found that the case

of the Writ Petitioner for premature release is under active consideration with the Government of Punjab. Therefore, directing the Government of Punjab to consider the case of the Writ Petitioner praying for premature release within one month from the date of this judgment purely on merit, the Writ Petition stands disposed of.