
(2016) 08 P&H CK 0225
In the Punjab And Haryana At Chandigarh
Case No : Criminal Writ Petition 946 of 2016

Himmat Singh @ Brandi

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 23-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 433

Citation : (2016) 4 LawHerald 2871

Hon'ble Judges : Mr. T.P.S. Mann and Mr. Gurmit Ram, JJ.

Bench : Division Bench

Advocate : Mr. S.S. Rana, Advocate, for the Petitioner; Dr. Deipa Singh, Additional Advocate General, Punjab, for the Respondents

Final Decision : Allowed

Judgement

Mr. T.P.S. Mann, J.—The petitioner has invoked the writ jurisdiction of this Court by filing the present petition under Article 226 of the Constitution of India seeking issuance of appropriate directions to the respondents to initiate and consider his case for grant of premature release.

2. The petitioner stands convicted and sentenced to undergo life imprisonment in case FIR No. 338, dated 05.12.2005 under Sections 302, 420, 465, 467, 471, 474, 34, 120-B IPC, Police Station Mohali vide judgment and order dated 02.06.2012 passed by learned Additional Sessions Judge, SAS Nagar (Mohali) and appeal filed by him against conviction and sentence stood admitted and is already on the regular Board of this Court.

3. According to the petitioner, he has already undergo more than 10 years and 05 months of actual sentence of imprisonment and about 14 years sentence with remissions. In terms of the instructions dated 04.04.2013 issued by the Punjab Government while exercising the powers conferred under Sections 432, 433 and 433 (A) Cr.P.C read with Article 161 of the Constitution, his case is required to be consider for pre-mature release. However, the jail Superintendent has refused to

initiate the case by passing a speaking order dated 10.05.2016 (Annexure P-2) that the Hon"ble Governor has issued instructions dated 16.04.2013 that the cases of life convicts for grant of pre-mature release be not put up or recommended where the appeal filed by the accused is pending either in the Hon"ble Supreme Court or in the High Court.

4. According to the petitioner, the action of the respondents in not initiating and considering the case of the petitioner for grant of pre-mature release is illegal, arbitrary, discriminatory and against the Government policy as contained in instructions dated 04.04.2013 (Annexure P-1). Prayer has accordingly been made for issuance of appropriate directions to the respondents to initiate and consider his case for pre-mature release.

5. Upon notice, reply has been filed on behalf of the respondents wherein it has been stated that the request of the petitioner for pre-mature release has been declined vide speaking order dated 10.05.2016, duly served upon the petitioner, explaining the reasons for not initiating and considering the pre-mature release case on the ground that office of Principal Secretary to Governor, Punjab has issued letter dated 16.04.2013 that the cases of life convicts for grant of pre-mature release be not put up before His Excellency, the Governor, Punjab in case the appeal filed by the accused is pending either in the Hon"ble Supreme Court or in the High Court. Copy of the letter dated 16.04.2003 has also been appended with the reply. At the same time, it has been admitted in the reply that as per Government Policy dated 04.04.2013, the petitioner is required to undergo 10 years of actual sentence and 14 years sentence with remissions which he had already undergone before his plea for pre-mature release could be consider.

6. Having heard learned counsel for the parties and on going through their respective pleadings, this Court finds that the case of the petitioner is squarely covered by the decision of a Division Bench of this Court in Harjit Singh @ Hare Ram v. State of Punjab and others 2015 1 RCR(Criminal) 370, wherein it has been held that just because a convict has preferred appeal before the appellate forum exercising his right of appeal his case for pre-mature release cannot be rejected on the flimsy ground that he has preferred an appeal which is pending for disposal. If the case of convict falls squarely under the instructions issued by the Governor of Punjab for pre-mature 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 pre-maturely released.

7. In view of above, the petition is hereby allowed and directions are issued to the respondents to initiate the pre-mature release case of the petitioner and consider the same in terms of the instructions dated 04.04.2013 without waiting for the final decision of the appeal preferred by the petitioner against his conviction and sentence.