
(2018) 09 P&H CK 0279
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5908 Of 2018

Jasbir @ Jassu

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 07-09-2018

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 148, 149, 216, 302, 307, 468, 473
Prisons Act, 1894 — Section 42A
Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 20, 61, 85

Citation : (2018) 09 P&H CK 0279

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Advocate : Vijay K. Jindal, Saurabh Mohunta

Final Decision : Allowed

Judgement

The petitioner is aggrieved against the order dated 25.12.2017 passed by respondent No.1 by which his prayer for premature release has been declined.

In brief, the petitioner along with 6 other co-accused was tried in a case registered vide FIR No.309 dated 17.07.2002 under Sections 302/307/148/149/216/120-B/468/473 of the Indian Penal Code, 1860 [for short 'the IPC'] at Police Station Jhajjar, Haryana for committing murder of Joginder Singh by firing with a gun at him and inflicting knife blows. The petitioner was convicted and sentenced by the Additional Sessions Judge, Jhajjar on 27.04.2005 to undergo rigorous imprisonment for life.

According to the respondents, there were three more criminal cases registered against the petitioner vide FIR No.444/1999 under Sections 379 of the IPC and 39 of the EC Act at P.S. Jhajjar, FIR No.66 dated 05.05.2012 under Section 42-A of the Prisons Act, 1894 at P.S. Bhondsi and FIR No.68 dated 6.5.2012 under Sections 20/61/85 of the NDPS Act at Police Station Bhondsi but in all these cases, the petitioner has been acquitted on 31.04.2009, 11.06.2015 & 18.03.2015 respectively. There are allegations against the petitioner of the jail

offences also which are mentioned in the reply as under:-

"(i) On 03.08.2006, during search, cash amounting to Rs. 5200/- was recovered from his possession-Verbal Warning issued by the Superintendent Jail.

(ii) On 03.06.2007, he surrendered after lockup while returning from parole-Oral warning issued by the Superintendent Jail.

(iii) On 18.01.2011, quarrelled with another convict - Punishment of separate confinement in security ward was awarded.

(iv) On 16.05.2012, it was revealed that the said convict with the help of Jail Warder Pawan Kumar supplied mobile phone and sulfa inside the jail. In this regard, two cases FIR No.66 dated 05.05.2012, U/s 42 Prisons Act, 1894, P.S. Bhondsi and FIR No.68 dated 06.05.2012 U/s 20-61-85 NDPS Act, P.S. Bhondsi were got registered against the petitioner. However, the petitioner was acquitted in both these cases."

Insofar as incidents occurred on 03.08.2006 and 06.06.2007 are concerned, the petitioner has been given oral warning. For the incident dated 18.01.2011, in regard to quarrel with another convict, he has been given the punishment of separate confinement but in regard to the incident dated 16.5.2012, regarding the supply of mobile phone and sulfa inside the jail, two FIRs were registered against him i.e. FIR No.66 dated 5.5.2012 and FIR No.68 dated 06.05.2012 the petitioner has been acquitted in both the cases.

The petitioner has applied for permanent release after suffering 12 years actual sentence and 14 years sentence with remission. His case was considered by the State Level Committee on 4.10.2017 in which it was observed that the case of the petitioner is covered under Clause 2(a)(xi) and 2(a)(xii) of the Policy. The respondents, while referring to the jail offence committed by the petitioner i.e. recovery of cash amount of Rs. 5200/- on 03.08.2006, surrendering after lockup while returning from parole on 03.06.2007 and punishment of separate confinement for the incident dated 18.1.2011, has held that his conduct in jail is persistently bad.

In the reply, the respondents have also submitted that the State Level Committee meeting was held on 20.5.2016 in which certain more parameters were recommended to be treated as heinous offences including murder during gang war/running over by vehicle after attacking the deceased and repeated by attacking the victim with fire arms or sharp edged weapons by giving the reasons that it creates a fear and terror in the mind of the society.

Learned counsel for the petitioner has however submitted that the case of the petitioner would not fall in Clause 2(a) of the Policy rather it would fall in Clause 2(b) of the Policy. It is submitted that Clause 2(a) of the Policy deals with heinous crimes which are defined from Clause 2(a)(i) to (xiv) of the Policy and a life convict, who has committed a heinous crime, has to suffer 14 years of actual sentence and 20 years with remission whereas in the cases which are not

covered by Clause 2(a) of the Policy, the life convict has to suffer 10 years actual sentence and 14 years with remission. It is further submitted that insofar as Clause 2(a)(xi) of the Policy is concerned, the petitioner has been acquitted in FIR No.66 dated 5.5.2012 and FIR No.68 dated 06.05.2012 which were registered against him for committing jail offence and for other two incidents occurred on 3.8.2006 and 3.6.2007 only warning was issued and for another incident dated 18.1.2011, there was an allegation against him that he had quarrelled with other convict for which he was given separate confinement and security ward. Learned counsel for the petitioner submits that these are no such incidents which may be termed as the persistently bad conduct in the prison.

As regards the allegation of the respondents that the petitioner has committed heinous crime, insofar as Clause 2(a)(xii) of the Policy is concerned, no definite reason has been given that how the petitioner is a threat or danger to the public safety because in other three criminal cases registered vide FIR No.444 of 1999, FIR No.66 dated 5.5.2015 and FIR No.68 dated 06.05.2012, the petitioner has been acquitted.

I have heard learned counsel for the parties and after perusal of the record, am of the considered opinion that there is merit in the submissions made by learned counsel for the petitioner because warning given by Jail Superintendent in the year 2006-2007 and the quarrel with the co-accused in the year 2011 are not such incidents which may be termed as persistently bad conduct in the prison to deprive the petitioner his right to seek premature release and the respondents have failed to point out how the petitioner would be a danger to the public safety as there is no other case registered against him except FIR No.444 of 1999 in which he has already been acquitted on 30.4.2009. Insofar as the recommendation of the State Level Committee are concerned, which were made in the meeting held on 20.5.2016, these have not been made part of the Policy and could not be applied to the case of the petitioner as the same was not prevailing at the time of his conviction in the year 2005.

Thus in view thereof, the present petition is hereby allowed, the impugned order dated 25.12.2017 passed by respondent No.1 is quashed and the matter is remanded back to respondent No.1 to re-consider the case of the petitioner and decide the same as early as possible preferably within a period of two months from the date of receipt of certified copy of this order.