
(1993) 08 P&H CK 0084

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous A. No. 4264-M of 1993

Jaswant Singh

APPELLANT

Vs

State of Haryana and anr.

RESPONDENT

Date of Decision : 06-08-1993

Acts Referred:

Citation : (1993) 3 AICLR 719 : (1993) 3 RCR(Criminal) 501

Hon'ble Judges : S.K.Jain, J

Advocate : V.A. Talwar, N.S. Bhinder, Advocates for appearing Parties

Judgement

S.K. Jain, J.

1. Jaswant Singh, petitioner herein, was convicted under Section 302 IPC and sentenced to life imprisonment by learned Sessions Judge, Ambala for his having committed the murder of Smt. Dayal Kaur. He is serving the term of sentence in Central Jail, Ambala. Claiming that his case was covered under para 2(b) of the policy regarding premature release of life convicts issued vide memo No. 36/13591100(2) dated 9th of November, 1991 he has brought this Crl. M. application under Section 482 Cr.P.C. read with articles 226/227 of the Constitution of India for the issuance of a writ in the nature of Habeas Corpus directing the State Government to release him forthwith. The State has contested the petition and have filed a reply. Para No. 2 thereof reads as under :

"The cases of the the premature release of the following 14 life convicts were put up before the committee constituted by Govt. for consideration of premature release cases of life convicts in the meeting held on 1451992. The recommendations of the committee in each case are as under :

13.60 O/G Jaswant Singh S/o Gopal Singh C.I. Ambala., This convict alongwith his brother and mother killed the deceased Diyal Kaur wife of Mohinder Singh a Naik in the Army who was on leave at the time of occurrence with Kulhari, Danda and Lathi. Brief story of the prosecution is that on 10791 Diyal Kaur deceased wife of Mohinder Singh was peeling some potatoes at the door of her Dehliz of

her residential house. The three accused jaswant Singh, armed with Kulhari, Harbans Singh armed with lathi and Kartar Kaur armed with a danda, came there raising lalkara and as Diyal Kaur cried `BachaoBachao" accused Harbans Singh gave two lathi blows to Diyal Kaur and thereafter Jaswant Singh, the main accused gave one kulhari blow on the right hand of Diyal kaur and other on the left side of her neck as a consequence she fell down on the ground and even thereafter Jaswant Singh continued causing Kulhari blows to Diyal Karu deceased who succumbed to her injuries. The occurrence was seen by Mohinder Singh her husband.

Some time back, there was proceedings under Section 107/151 of the Cr.P.C. as well between parties and a prior quarrel was compromised about 2 years ago. The cause of murder was that the accused had grievance that why Diyal Kaur was under the influence at her own husband when earlier she had some intimacy with the accused.

Keeping in view the heinous, brutal and ghastly murder committed by this life convict, the committee recommended that his premature release case may be reconsidered under para 2(a) of the instructions dated 19111991 on completion of 14 years of actual sentence including undertrial period and after earning at least six years remissions. The Government have accepted the recommendations of the Committee.

2. From the bare reading of the above para of the written statement, it is evident that the stand of the State is that the case of the petitioner would be reconsidered under para 2(a) of the Government instructions dated 19th November, 1991 after he served 14 years of actual sentence including undertrial period and earned atleast six years remission.

3. The point for determination herein is as to under which para of the policy regarding premature release of life convicts, dated 19th of November, 1991 the case of the petitioner fell.

4. According to the learned counsel for the State, it is covered under para 2(a) of the policy whereas the learned counsel for the petitioner says that it is covered under subpara (b) of para 2 thereof. Both subparas are reproduced below for ready reference :

"The matter regarding premature release of life convicts has further been considered by the Government and in supersession of all previous instructions, the following policy is laid down on the subject :

(a), Convicts whose death sentence has been commuted to life imprisonment and convicts who have been imprisoned for life for having committed a heinous crime. Such as, murder with wrongful confinement, for extortion/robbery, murder with rape, murder while undergoing life sentence, murder with decoity, murder under T.D. Act, 1987 murder with untouchability (offences) Act, 1955, murder in connection with dowry, bride burning, murder of a child under the age of 14

years, murder of handicapped or pregnant woman or murder after abduction or kidnapping, murder on professional/hired basis, murder exhibiting brutality such as cutting the body into pieces or burning/dragging the body as evident, bad conduct in the prison and those who cannot for some definite reasons be prematurely released without danger to public safety, or who have been imprisoned for life under Section 120B of IPC or life convicts who have been awarded life imprisonment a second time under NDPS Act or life convicts who have been imprisoned for life second time under any offence., Their case may be considered after completion of 14 years actual sentence including under trial detention period, and after earning at least six years remission.

(b), Adults life convicts who have been imprisoned for life but whose cases are not covered under (a) above and who have committed crime which are not considered heinous as mentioned in clause (a) above., Their cases may be considered after completion of 10 years of actual sentence including under trial period provided that the total period of such sentence including remission is not less than 14 years.

(c) x x x x, x x x x

(d) x x x x, x x x x

(e) x x x x, x x x x

5. Findings of the learned Sessions Judge recorded in para No. 2 of the judgment annexure P1 reads as under :

"Briefly the story of the prosecution is that on 10/7/1981 at about 8 or 8.30 a.m. Diyal Kumar wife of Mohinder Singh was peeling some potatoes at the door of her Dehli of the residential house in village Musimbal Musalmanan, Tehsil, the three accused Jaswant Singh armed with Kulhari, Hasbans Singh armed with a lathi and Kartar Kaur armed with a danda came there raising lalkaras and as Diyal Kaur cried `BachaoBachao' Harbans Singh accused gave two lathi blows to Diyal Kaur and thereafter Jaswant Singh the principal accused gave one Kulhari blow on the right hand of Diyal Kaur and another on the left side of her neck and as a consequence she fell on the ground and even thereafter Jaswant Singh continued causing Kulhari blows to the aforesaid Diyal Kaur who succumbed to her injuries. the occurrence was seen by Mohinder Singh her husband, a Naik in the army who was on leave in those days and present in the house. Besides this Karam Kaur the mother-in-law of Diyal Kaur and Balwant Singh who were following the assailants apprehending occurrence also saw the occurrence itself. An FIR was lodged by Mohinder Singh the husband as well as the eyewitness at 12.30 p.m. the same day at Police Station Chhappar. After completion of investigation and presentation of challan, the case was committed for trial as mentioned above."

6. From the perusal of above para it is clear that the case of the petitioner does not fall within para 2(a) of the policy above mentioned. I do not agree with the

learned counsel for the State that it was covered within the meaning of the term, 'murder exhibiting brutality such as cutting the body into pieces or burning/ dragging the body as evidenced from judgment of sentence," because nowhere in the judgment Ex. P.1, it was mentioned that the petitioner had cut the body of his victim into pieces or had burnt or dragged the body. I find force in the submissions of learned counsel of the petitioner that his case covered under para 2(b) of the policy.

7. After having come to the above conclusion, I direct the State Authorities to reconsider the case of the petitioner under para 2(b) of the policy regarding premature release of the life convicts issued on 19th of November, 1991 within three months from today. The petition stands disposed of accordingly.