

(1996) 11 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 18889-M of 1994 (O&M) and Criminal Miscellaneous No. 16739 of 1995

Joginder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 20-11-1996

Acts Referred:

Citation : (1997) 2 RCR(Criminal) 461

Hon'ble Judges : S.C.Malte, J

Advocate : V.K. Jindal, Rajiv Malhotra, Advocates for appearing Parties

Judgement

S.C. Malte, J.

1. By this writ the petitioner is seeking a direction to consider his case for premature release. The admitted position is that petitioner Joginder Singh was convicted under Section 302 IPC and was initially sentenced to death by hanging. The High Court reduced that sentence to imprisonment for life. The initial sentence was dated 10.7.1979. The judgment passed by Madhya Pradesh High Court was in 1980. In the course of time, the said prisoner came to be transferred to Central Jail, Jalandhar. In these set of facts, now question arises which of the two States shall consider the question of premature release of the said prisoner.

2. The question of premature release of a prisoner is to be considered by an appropriate Government as per Section 432 of the Cr.P.C. The term "appropriate Government" used in Sections 432 and 433 of the Cr.P.C. has been defined in clause 7 of Section 432 Cr.P.C. As per subclause (b) of clause 7 of Section 432 Cr.P.C. the term "appropriate Government" means the Government and the State within which the offender is sentenced or the said order is passed. It is, therefore, obvious that it is the State of Madhya Pradesh who would be an appropriate Government to consider the case of the prisoner under Section 432 Cr.P.C. In the context of this, it may be mentioned that the provisions of Transfer of Prisoner Act, 1950, do not provide in respect of the provisions which would be

applicable to the prisoner while considering his case for premature release. Section 3 Clause 2 of that Act states to the extent only that such prisoner shall be detained in the jail in terms of the writ or order of the court etc. until such person is discharged or removed in due course of law. The term "in due course of law" should be interpreted in the light of the provisions of Section 432 Cr.P.C. which provides regarding power of the appropriate Government to suspend or remit the sentence of a prisoner. In view of such position, I hold that the case of premature release of this prisoner should be considered by the authorities of the State of Madhya Pradesh.

3. This brings me to consider which of the rules would be applicable while considering the case of the prisoner for premature release. While rejecting the prayer for premature release, in a cryptic letter it was informed by the Deputy Secretary of M.P., Jail and Justice Department vide memo No. 7/5/93/19119/21 dated 10.1.1994, that the prayer for grant of premature release has been rejected. No reason has been assigned for rejection of the prayer. The counsel for the petitioner submits that as per the provision applicable to the prisoner, his case deserves to be favourably considered. According to him the provisions which were in existence at the time of conviction of the prisoner would be applicable to him for considering his premature release. Such a point has been raised in this court on earlier occasion also. This Court has repeatedly held that the case of the prisoner shall be considered in the light of the provisions which were applicable to him at the time of his conviction. One of such recent judgments passed by this court is in Criminal Misc. No. 11087M of 1994 Bhupinder Singh v. State of Punjab, decided on 2.1.1996. In view of that, I hold accordingly in this case also.

4. I, therefore, direct the Government of Madhya Pradesh to reconsider the case of the prisoner under the provisions which were applicable to the prisoner at the time when he was convicted. His case shall be considered and disposed of within three months from the date of receipt of a copy of the order. It may be further mentioned here that by order dated 21.8.1990, this Court was pleased to order the release of the prisoner Joginder Singh on furnishing surety to the satisfaction of District Magistrate, Kapurthala. Then liberty was granted to the Madhya Pradesh Government to apply for cancellation of the bail if proceedings for premature release since pending then ended into decision against the petitioner who was on bail.

5. Later on, the aforesaid order dated 21.8.1990 was further reconsidered, and subsequent order dated 9.12.1994 passed by this Court indicates that the petitioner was directed to surrender before the District Magistrate, Kapurthala on 12.12.1994, and he was at liberty to file application for bail there. That was by way of adinterim measure until the main petition came to be decided. Pursuant to that order, the petitioner filed application for bail which was granted, and till this date he is on bail.

6. In case the Madhya Pradesh government rejects the prayer of the petitioner for premature release, it would be at liberty to take necessary steps for

cancellation of the bail, and for taking the prisoner back in custody.