

(2020) 05 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 2168 Of 2019

Khushi Ram @ Major Singh

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 12-05-2020

Acts Referred:

Indian Penal Code, 1860 — Section 302
Arms Act, 1959 — Section 25
Code Of Criminal Procedure, 1973 — Section 432, 433
Constitution Of India, 1950 — Article 161

Citation : (2020) 05 P&H CK 0009

Hon'ble Judges : Gurvinder Singh Gill, J

Bench : Single Bench

Advocate : Himanshu Dhakla, Vikram Singh, Aditi Girdhar

Final Decision : Disposed Of

Judgement

Gurvinder Singh Gill, J

1. The petitioner, who is undergoing life imprisonment, has approached this Court seeking setting aside of order dated 23.2.2019(Annexure P-6) , passed by respondent no.3, Superintendent of Jail, Gurugram, vide which a representation submitted by petitioner for his 'premature' release, has been rejected.

2. The petitioner was convicted vide judgment dated 14.9.2009 (Annexure P-1) passed by learned Sessions Judge, Gurgaon for offences punishable under Sections 302 IPC and under section 25 of Arms Act, for having committed murder of Monu. The petitioner challenged his conviction by way of filing Criminal Appeal i.e. CRA-D-1003-DB of 2009, which was dismissed vide judgement dated 17.5.2013. The sentences imposed for both the offences, which were ordered to run concurrently, are as follows:

Conviction under section

Sentence Imposed

302 IPC

R.I. for life and fine of Rs.20,000

25 of Arms Act

R.I. for three years and fine of Rs.5,000

3. The petitioner, admittedly, as on 14.12.2019, has undergone the following sentence:

Under trial Post conviction

Years

Months

Days

:

01

09

05

:

10

03

01

:

12

00

06

:

03

07

14

:

15

07

20

:

00

07

00

:

00

00

01

:

15

00

19

Total

Remissions

Total including Remissions

Less Parole period

Overstay period TOTAL SENTENCE

4. The learned counsel for the petitioner has submitted that the petitioner had earlier filed a writ petition in this Court i.e. CWP 1071-2019 seeking his premature release which was disposed off vide order dated 23.1.2019 (Annexure P-5), directing the petitioner to move a representation to Superintendent of Jail, Gurugram (respondent no.3) and that although the petitioner did move a representation to respondent no. 3, but the same has been declined erroneously, vide impugned order dated 23.2.2019 (Annexure P-6).

5. It has further been submitted that the Superintendent of Jail, Gurugram (Respondent No. 3), while declining the representation of petitioner seeking his premature release, has considered the case in accordance with policy dated 13.08.2008 issued in respect of exercise of powers under section 432 and 433 Cr.P.C. whereas the case of the petitioner was required to be considered in light of the guidelines dated 12.4.2002 pertaining to exercise of powers of the Governor under Article 161 of Constitution of India, as per which he was entitled to be released prematurely upon completion of 10 years of actual imprisonment and 14 years of total imprisonment including remissions.

6. Opposing the petition, the learned State counsel has submitted that the case of the petitioner was correctly declined vide order dated 23.2.2019 (Annexure

P-6) while applying guidelines dated 13.08.2008 (Annexure-3), being the policy applicable at the time of conviction of the petitioner and as per which the petitioner can seek consideration of his case for premature release only upon completion of an actual sentence of 14 years, which the petitioner has not undergone so far.

7. I have considered rival submissions addressed before this Court. It needs to be noticed that policy dated 13.8.2008(Annexure P-3) is only in respect of exercise of powers of appropriate Government under section 432 and 433 Cr.P.C. and not in respect of powers of the Governor under Article 161 of Constitution of India. A perusal of order dated 23.2.2019(Annexure P-6) would show that the same has been considered in light of guidelines dated 13.08.2008(Annexure P-3). As per para 2(b) of said guidelines, a convict, who has been sentenced to life imprisonment for having been convicted for an offence wherein a sentence of death is one of the punishments provided, is to be considered for premature release only upon completion of an actual sentence of 14 years with a total of 20 years including remissions. Since the petitioner has been convicted for an offence of murder wherein death sentence is one of the punishments provided, the case of the petitioner would fall under para 2(b) of the said guidelines and since the petitioner has not undergone the requisite sentence, therefore in terms of policy dated 13.08.2008 he is ineligible for being considered for his premature release at this stage. As such it is held that the case of the petitioner, being not covered under policy dated 13.8.2008, cannot seek any relief in terms of policy dated 13.8.2008 at this stage. The first contention submitted in this regard by the learned counsel for the petitioner, thus, cannot be accepted.

8. Coming to the second contention of the petitioner to the effect that his case was required to be considered in terms of policy of the year 12.4.2002, a perusal of order dated 23.1.2019 (Annexure P-5) passed by this Court in CWP 1071-2019 would show that when the petitioner approached this Court earlier, the case of the petitioner was that he is covered under policy dated 13.8.2008 and consequently this Court had directed that the petitioner may move a representation in this regard to the Superintendent of Jail who was directed to pass an order within one month. It was pursuant to the said directions that the impugned order dated 23.2.2019(Annexure P-6) came to be passed. In other words, the specific case of the petitioner has been that he deserves to be released prematurely in terms of policy dated 13.8.2008. Even in the present petition, the petitioner has nowhere specifically stated that he seeks to be considered for premature release in exercise of powers of the Governor under Article 161 of Constitution of India or as per guidelines dated 12.4.2002 and has referred to instructions dated 13.8.2008 (Annexure P-3) only.

9. This Court has, however, considered the aforesaid issue of application of guidelines dated 12.4.2002 to a convict, who has been convicted post 13.8.2008, as in the present case, in a judgement of even date passed in CfiWP 2025 of 2019 Raj Kumar D Bittu vs. State of Haryana, wherein after a detailed

discussion some directions have been issued by this Court and the case of the petitioner (in the said case) has been ordered to be considered in accordance with the said directions. Since an identical issue has been raised in the present case, although not specifically pleaded, it is ordered that in case the petitioner moves an application for being considered in terms of powers under Article 161 of Constitution of India, the same be considered in accordance with the directions contained in para 34 and 35 of above mentioned judgement.

10. The petition stands disposed of accordingly.