
(1996) 10 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Criminal W. P. No. 47 and 58 of 1995

Lal Dhar and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 15-10-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 433A

Citation : (1996) 2 LW(Cri) 113

Hon'ble Judges : M. Srinivasan, C.J.; R.L. Khurana, J.; A.L. Vaidya, J

Bench : Full Bench

Advocate : Kuldip Singh, Mr. Ashwani Sharma Advocates, for the Appellant;
Indar Singh, Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—The former is a petition by seven prisoners in Model Central Jail, Nahan sent through the Superintendent of the jail. All of them are life convicts having undergone different periods of imprisonment. But none of them has completed fourteen years of actual incarceration. Relying upon a judgment of Andhra Pradesh High Court dated 16.2.1995 in M.T. Khan v. State of Andhra Pradesh and others., (W.P. No. 2422 of 1995) in which the said Court gave certain directions to the Government for premature release of life convicts on fulfillment of certain conditions. Such directions were to calculate the periods of imprisonment by including the periods of remission earned by the prisoners. According to the Petitioners if the under trial periods and remission periods are taken into calculation, they had undergone not less than nine years of imprisonment and they should be released forthwith.

2. The State has filed a reply containing the details of sentences awarded. It is also submitted that Jail Administration in this State generally is on the basis of the provisions of the Punjab Jail Manual. It is pointed out that none of the Petitioners has completed 14 years of imprisonment as required by Section 433-A of the Code of Criminal Procedure.....

Maru Ram and Others Vs. Union of India (UOI) and Others, and

Ashok Kumar alias Golu Vs. Union of India and others, - Referred to.

6. In so far as the judgment of the Division Bench of this Court in Life Convict Karam Singh Vs. State of H.P. and Others, is concerned, there will be no difficulty in holding that it is not good law as it has over-looked a relevant statutory provision...

Himachal Pradesh Good Conduct Prisoners (Temporary Release) Act, 1968 (Act No. 12 of 1969), (Section 3 provides for temporary release of prisoners on certain grounds) -Referred to.

Kartar Singh and Others Vs. State of Haryana,

Suklal Hansda and Others. v. State of West Bengal, (1986) 4 SCC 433

Bhagirath Vs. Delhi Administration, Constitution Bench overruling the judgment in Kartar Singh and Others Vs. State of Haryana, State of Punjab and others Vs. Joginder Singh and others,

Gopal Vinayak Godse Vs. The State of Maharashtra and Others,

State of Haryana and another Vs. Ram Diya, the Supreme Court held that Section 433-A was prospective in operation and mandatory requirement under the Section was 14 years actual imprisonment.

13. The entire gamut of Section 433-A was once again considered in Ashok Kumar alias Golu Vs. Union of India and others, The court held that the ruling in Bhagirath Vs. Delhi Administration, was not contrary to either Gopal Vinayak Godse Vs. The State of Maharashtra and Others, or to Maru Ram and Others Vs. Union of India (UOI) and Others, . It was also held that the decision of the Constitution Bench in Kehar Singh and Another Vs. Union of India (UOI) and Another, did not upturn the ratio in Maru Ram and Others Vs. Union of India (UOI) and Others,

15. Thus the law is very clearly laid down by the Supreme Court that life convict has to undergo 14 years of actual incarceration before he could claim pre-mature release, subject of course, to the powers of pardon under Article 72/161 of the Constitution of India.

State of Punjab v. Kesar Singh 1966(5) Scale 444 - Referred to.

17. The Petitioners have referred to the ruling of the Andhra Pradesh High Court in Writ Petition No. 2422 of 1995 M.T. Khan v. State of Andhra Pradesh and others. On a perusal of the judgment, it is seen that it was based more upon an agreement between the political prisoners and the Government. The ruling has no relevance whatever in the present case....

Paragraph 516-B of the Punjab Jail Manual - Referred to.

19. It is for the Petitioners to approach the State Government with their appropriate representations, which may be considered by the State Government and appropriate orders be passed. It is certainly not open to this Court to grant the prayers of these Petitioners for release from prison.

20. It is also not open to this Court to give a direction to the State Government to include the period of parole while calculating the period of imprisonment. The ruling of this Court in Life Convict Life Convict Karam Singh Vs. State of H.P. and Others, is not good law and it is hereby overruled.

21. Hence these criminal writ petitions are dismissed.