
(1994) 02 P&H CK 0072

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 11446-M of 1993

Moti

APPELLANT

Vs

Government of Haryana and others

RESPONDENT

Date of Decision : 03-02-1994

Acts Referred:

Citation : (1994) 2 RCR(Criminal) 141

Hon'ble Judges : Harmohinder Kaur Sandhu, J

Advocate : S. S. Gill, A. S. Tirkha, Advocates for appearing Parties

Judgement

Harmohinder Kaur Sandhu, J.

1. Moti was tried for an offence under Sections 302, 325, 324, 323 read with Section 149 I.P.C. along with 11 other persons by Additional Sessions Judge, Sirsa, and was sentenced to undergo imprisonment for life vide judgment dated 15.1.1993. At present he is undergoing imprisonment in District Jail, Sirsa. He has already served actual sentence of 12 years 5 months and 1 day and total sentence including remissions for 16 years 10 months 1 day. During his detention in jail he never committed any jail offence and maintained good conduct. Under the instructions issued by the Government he became eligible for consideration of his case for premature release which was duly initiated by the Superintendent District Jail, Sirsa, but was rejected by the Government on the ground that he had committed a heinous crime along with 11 other persons by murdering Babu Singh and Bhola Singh and causing injuries to five others. It was, thus, ordered that his case for premature release will be reconsidered after he had undergone actual sentence for 14 years and earned remissions for six years at least. The petitioner has filed this petition under Section 482 Cr.P.C. for directing the respondents to consider his premature release case.

2. The petitioner alleged that he had not committed any heinous crime and his case was covered under para 2(b) of the Government Instructions dated 19.11.1991 and not under para 2(a) of those instructions. His coaccused Billu and Desi were already ordered to be released prematurely by this Court. Once

he was convicted for an offence under Section 302 I.P.C. the heinousness of the crime remained no longer relevant for determining his mercy petition and his case was to be considered in accordance with the instructions issued by the Government. In the petitions filed by Billu and Desi his co accused it was already held that they had not committed a heinous crime then he could not be discriminated.

3. In the return filed by the respondents this fact was admitted that the petitioner had undergone more than 12 years" actual sentence and more than 17 years" sentence including remissions but it was maintained that he had committed the murder of two persons and had injured five others in the company of his 11 coaccused which amounted to a heinous crime and the State Level Committee after taking into consideration the facts and circumstances of the case ordered that his case may be reconsidered after he had actually undergone 14 years of sentence including undertrial period and earned remissions for six years.

I have heard the learned counsel for the parties.

4. This fact is admitted that the case of the petitioner for grant of pre mature release was to be considered in the light of the instructions dated 19.11.1991 and according to para 2(b) of these instructions the petitioner was eligible for the consideration of his case for premature release after completion of 19 years" actual sentence including undertrial period and undergoing 14 years of imprisonment including remissions. It was urged on behalf of the petitioner that the petitioner was held guilty for an offence under Section 302 I.P.C. and this case was not covered by para 2(a) of the instructions which defined a heinous crime as under :

"murder with wrongful confinement for extortion/robbery, murder with rape, murder while undergoing life sentence, murder with dacoity, murder under T.D. Act, 1987, murder with Untouchability (Offences) Act, 1955, murder in connection with dowry, bride burning, murder of handicapped or pregnant woman, murder of a child below the age of 14 years or murder after abduction or kidnapping, murder on professional/hire basis, murder exhibiting brutality such as cutting the body into pieces or burning/dragging the body as evident from judgment of sentence, persistent bad conduct in the prison and those who cannot for some definite reasons be prematurely released without danger to public safety, or convicts who have been imprisoned for life under Section 120B of IPC or life convicts who have been awarded life imprisonment a second time under N.D.P.S. Act or life second time under any offence."

5. It is evident from a perusal of the above instructions that case of the petitioner is not covered under this clause and the learned State counsel failed to point out as to how the offence committed by the petitioner could be described as a heinous offence as defined above. Copy of the order Annexure P/2 shows that two of the coaccused of the petitioner, namely, Billu and Desi filed separate

petitions under Section 482 Cr.P.C. which were allowed and it was held that their case was not covered by para 2(a) of the instructions and it was to be considered in accordance with the provisions of para 2(b). The petitioner's case is not distinguishable from that of his coconvicts and his case requires reconsideration.

6. As a result I allow this petition and direct the respondents to consider the case of the petitioner for his premature release in accordance with para 2(b) of the instructions dated 19.11.1991 and dispose of the same within three months of the receipt of the copy of this order.