

(1986) 07 P&H CK 0039

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 408 of 1986

Naranjan Singh S/o Nand Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 25-07-1986

Acts Referred:

Citation : (1986) 07 P&H CK 0039

Hon'ble Judges : M.M.Punchhi, J

Advocate : D.S. Keer, V.K. Jindal, Advocates for appearing Parties

Judgement

M.M. Punchhi, J. (Oral)

1. This Petition for habeas corpus preferred by a convict apparently shows angularities in the working and application of section 432, Criminal Procedure Code, whereunder the appropriate Government suspends, remits and commutes sentences, and sometimes this Court is persuaded to give directions to the appropriate Government within the domain of that provision.

2. The petitioner was a life convict. His premature release case at one point of time was rejected because, according to the Government, he had unfilled the requisite period before his case for such relief could be considered. It transpired that the view of the Government needed review because in the meantime the question had cropped up as to whether undertrial period was to be reckoned in computing life sentence. When this matter was pending at the instance of the petitioner, K.P.S. Sandhu, J. on 6th March, 1985 in Cr. W.P. No. 92 of 1985 ordered the release of the petitioner on bail to the satisfaction of the Chief Judicial Magistrate, Sangrur. Finally, on 16th September 1985, the same Hon'ble Judge, while giving direction to the appropriate Government to consider the case of the petitioner for premature release in view of the law settled by the Supreme Court in Bhagirath v. Delhi Administration, A.I.R. 1985 Supreme Court, 1050, (1985(2) Recent CR 85) ordered that in case the prayer of the petitioner was declined, the State would be at liberty to apply for cancellation of bail and similarly the prisoner in view of that eventuality would be entitled to assail the

order of the State Government refusing to release him prematurely.

3. As averred in the return, the Government passed an order on 10th January, 1986, rejecting the case of the petitioner, for premature release. Now in view of this development, the petitioner had to be arrested. The Superintendent of Jail, who stood informed of the rejection of the case of the petitioner, wrote to the Chief Judicial Magistrate, Sangrur for cancellation of bail of the petitioner. The petitioner, however, was arrested without such cancellation on 12th April, 1986. This fact was brought to the notice of the Chief Judicial Magistrate, who passed a formal order of cancellation of bail of the petitioner on 11th July, 1986 vide order (Annexure R.2). The grievance in the present petition is that there has been no order of cancellation before the petitioner could be arrested and that order had necessarily to be that of this Court.

4. Whether it be the appropriate Government or this Court, the source of power to act in such matters is found in section 432 of the Code of Criminal Procedure. Subsection (3) thereof provides that if any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo and unexpired portion of the sentence. The condition imposed by this Court was that the convict had to remain on bail till his case for premature release was decided on 10th January, 1986. That event was coterminous with the order suspending sentence being over. No thereafter any police officer without any warrant of arrest could arrest the convict and remand him to prison to undergo the unexpired portion of the sentence. The only suggested impediment is the letter of the orders of this Court which said that the State would be at liberty to apply for cancellation of bail, This Court did not specifically say that cancellation of bail had to be applied for in this Court. This Court did not prohibit the Chief Judicial Magistrate, who had been directed to release the petitioner on bail to his satisfaction, not to have recalled his order and order rearrest of the petitioner. As it seems to me, these orders have to be read in the spirit of section 432 of the Code of Criminal Procedure to mean that if need be the State could apply for cancellation of but if without arising that need, the mandate of section 432 of the Code of Criminal Procedure could otherwise be carried out, there was no such necessity. In any case, the letter of the order of this Court stands complied with even by belated compliance when the Chief Judicial Magistrate vide order, Annexure R2, has on 11th July, 1986 cancelled bail.

5. For what has been said above, the angularities have been removed. No relief can flow to the petitioner instantly. Accordingly, this petition is dismissed.