

(1991) 09 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4469-M of 1991

Saggar Singh

Date of Decision : 16-09-1991

Acts Referred:

Citation : (1991) 2 AICLR 818 : (1992) 1 RCR(Criminal) 175

Hon'ble Judges : Harmohinder Kaur Sandhu, J

Advocate : I.P.S. Sidhu, D.C. Mittal, V. K. Jindal, Advocates for appearing Parties

Judgement

H. K Sandhu J

1. Saggar Singh petitioner who is a life convict under the orders of Additional Sessions Judge, Ludhiana dated April 7, 1986 has come to this Court in this Criminal Miscellaneous Petition under section 482 of the Code of Criminal Procedure read with Articles. 226/227 of the Constitution of India for his premature release.

2. The case of the petitioner is that at the time of conviction he was found to be 18,19 years of age and as such he was definitely below twenty years of age at the time of commission of the offence. As per instructions issued by the Government he was required to undergo only five years" actual sentence. But he had "undergone more than five years" actual sentence and had also earned remission of about 4 years. He had not been found guilty of any jail offence. The State of Punjab exercising power under Article 161 of the Constitution issued "various guidelines for consideration of premature release cases which are Annexure P1, P2 and P3. Keeping in view the said guidelines he moved a petition for grant of premature release on July 3, 1990. This petition was received by the State Government but his case was not considered for a sufficiently long time. He then moved criminal miscellaneous petition No. 11720M of 1990 which was put up for final hearing on October 8, 1990. This petition was decided on that date and directions were issued to the State Government to dispose of the mercy petition of Saggar Singh petitioner within four months. The premature release case of the petitioner was then considered and rejected by the State Government, on March 15, 1991 vide order. copy of which was Annexure P3 The

petitioner alleged that this order was wholly arbitrary and he was deprived of his liberty without following the procedure established by law. He had completed more than 5 years" actual sentence and more than ten years" sentence including remissions. There was no complaint against his antecedents/conduct during the period of parole and he was not punished for any jail offence.

3. In the reply filed by the respondents, the averments of the petitioner with regard to the actual sentence undergone, remissions earned and availing of parole etc. were admitted. This fact was also admitted that mercy petition of the petitioner was rejected by the Government but it was alleged that premature release of the petitioner was not ordered as he had not undergone six years" substantive sentence.

The operative part of the order Annexure P5 reads as

"The mercy petition of Saggar Singh has been considered. Even to date lie has not undergone requisite period of six years of actual sentence and with remission ten years He has undergone only five years ten months eleven days of actual sentence to date and with remission it comes to hardly 9 1/2 years. Thus, he is not eligible to have his case considered on the" basis of actual sentence undergone. He has not remained in Open Air Jail Nabha or Kapurthala for one year because of which his case could be considered a year in advance of the sentence both actual and with remission. The local respectables have not made any favourable statement. They have indicated desperate nature of this convict. The facts also disclosed that it was a cool and calculated murder and not a case in which there was complete absence of motive and premeditation "

4. Instructions contained in Annexure P3 issued by the Government lay down the guidelines for premature release of convicts and clause 6 of the same runs as follows :

"After introduction of section 433A of the Code of Criminal Procedure with effect from December 18, 1978 since, very premature release case of a life convict will be taken up after he has completed fourteen years" actual sentence in jail, a minimum period of five/six years for juvenile and women prisoners and 7 1/2 8 1/2 years for adult male prisoners can be taken as one of the guidelines for release on mercy petition."

It was argued on behalf of the petitioner that when the JUDGMENT Annexure P5 was passed on March 15, 1991 it was observed that the petitioner had undergone only five years ten months and eleven days of actual sentence and with remissions it came to about 9 1/2 years. Thus, he was not eligible to have his case considered on the basis of actual sentence undergone. Even if he was required to undergo six years" actual sentence, by now that period had elapsed and he was eligible for his premature release. His petition could not be discarded on that ground. I find that this contention of the learned counsel is tenable. The "impugned order was passed in the month of March and by that time the petitioner had already undergone actual sentence of five years ten months and

eleven days. By this time he has undergone more than six years" actual sentence and as per guidelines issued by the Government he was eligible to have his case considered.

5. As regards the other grounds mentioned in the order Annexure" P5, the same cannot be considered as justifiable. The mere fact that some local respectables indicated that the petitioner was of desperate nature without any specific act having been attributed to him, will not debar the petitioner from having his case considered for premature release. No one had contended that premature release of the petitioner has to involve any law and order problem. It is well settled that concession for grant of premature release cannot be refused to the convict particularly to a juvenile petitioner. Saggar Singh when he is required to be granted premature release after execution of bonds and furnishing surety undertaking to keep peace and be of good behaviour.

6. The other ground that it was a cool and calculated murder and not a case in which there was complete absence of motive and premeditation also does not create any hitch in the consideration of the case of the petitioner for premature release when he is otherwise legally entitled to the grant of premature release. His case was to be considered irrespective of the fact whether the murder was without motive or premeditation or not. As observed in the case of Nirmal Singh vs. The State of Punjab in Criminal Writ Petition No. 4036 of 1989 decided on July 24, 1990 by Hon"ble Mr. Justice S. S. Grewal rejection order Annexure P5 is thus not sustainable and is liable to be quashed.

7. As a result, I allow the criminal miscellaneous and direct the respondent authorities to reconsider the mercy petition of the petitioner and pass an appropriate order for his premature release in the light of the observations made above. The release order shall be on such conditions as they will deem fit with respect to the remaining period of sentence.