
(1998) 04 P&H CK 0055

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2290/M of 1998

Sanjeev Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 01-04-1998

Acts Referred:

Citation : (1998) 3 RCR(Criminal) 471

Hon'ble Judges : R.L.Anand, J

Advocate : J.S. Brar, V.K. Jindal, Advocates for appearing Parties

Judgement

R.L. Anand, J.

1. Sanjeev Kumar has filed the present petition under Section 482 Cr.P.C., read with Articles 226/227 of the Constitution of India for the quashment of the order dated 20th May, 1987 vide which warning was given to the petitioner for not surrendering in time. The petitioner has sought further declaration that the said warning may not become obstruction/obstacle for considering his case of premature release.

2. Brief facts of the case are that the petitioner was tried for an offence of murder by the learned Sessions Judge, Jalandhar, and was sentenced to undergo life imprisonment vide judgment and order dated 23rd February, 1987. The appeal of the petitioner was dismissed by the High Court and also by the Hon'ble Supreme Court. The petitioner applied for emergency parole for two weeks and he was supposed to surrender before the Jail Authorities on 6th May, 1987. However, he reported before the Jail Authorities on 7th May, 1987. Treating that the petitioner has not complied with the directions regarding surrender, his case was processed and ultimately on 28th May, 1987, order was passed by the Superintendent :

"The convict is present. He tells that he is late by one day in coming back due to his illness. He had presented himself after lock up on 7th May, 1987 evening at the jail. This is his first offence. Taking a lenient view, he is awarded warning

only."

3. The stand of the Government is that the present petition is highly belated, which has been filed in the year 1998, after a lapse of 11 years and thus it is liable to be dismissed. Further it is submitted on behalf of the State that the Superintendent was justified in passing the order of warning as provided under subsection (3) of section 8 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (for short 'the Act').

4. Learned counsel appearing on behalf of the petitioner has assailed the order dated 28th May, 1987 on various grounds, inter alia, that the procedure resorted to by the Superintendent was highly illegal and against the principles of natural justice; that the punishment was awarded in the year 1987 and it automatically lapses after the expiry of three years; that the warning under the Jail Manual cannot be taken into consideration for the purpose of furlough/premature release. Finally the learned counsel for the petitioner submits that at this stage the petitioner has been deprived of the furlough on account of the punishment dated 28th May, 1987.

5. The contention of the learned counsel for the petitioner has been strongly refuted by Shri J.S. Brar, D.A.G. Punjab, who supported the order dated 28th May, 1987 with the help of subsection (3) of Section 8 of the aforesaid Act and also on the ground of delay and laches.

6. In Crl. Misc. No. 1471M of 1993 (Sat Pal v. State of Haryana and others) the Hon''ble D.B. of this Court was pleased to give the dictum as follows :

"We, however, feel that the State of Haryana should also keep in mind the nature of the jail offence committed in stipulating such a period and to provide for different periods keeping in view the gravity of the jail offence. During the interregnum, we direct that in the light of Avtar Singh's and Prem Singh's cases supra, the jail offences beyond three years should not be considered. The present petition is disposed of in the above terms."

7. It may be mentioned here that the decision of the Division Bench arrived on account of some contradictory findings given by the Hon''ble Single Judges of this court about the life of the jail punishment orders. In some cases it was observed by the Hon''ble Single Bench that the effect of jail punishment should be erased after the expiry of five years and in some cases it was stated that it should be erased after the expiry of three years.

8. The order dated 28th May, 1987 in the opinion of this Court has been passed in such a manner that the stand of the petitioner has not been properly appreciated. The proceedings from 8th May, 1987 upto 28th May, 1987 indicate that immediately after surrendering, the petitioner submitted his medical report regarding nonreporting to the Jail in time and this was so stated by the Assistant Superintendent.

9. On the same day that the petitioner submitted the medical certificate from

which it is evident that his absence was due to illness. On the same day even the Superintendent gave directions to the Deputy Superintendent to get the medical certificate verified from Civil Surgeon, Jalandhar and then put up the case. On 28th May, 1987 the Deputy Superintendent makes a note on the file that the Civil Surgeon, Jalandhar, was written about the medical certificate but no reply had been received from him. Further delay may not occur in this case, therefore, the case was submitted for necessary orders. Instead of giving a reminder to the Civil Surgeon to give the necessary reply regarding the authenticity of the medical certificate submitted by the petitioner, the Superintendent Jail disposes of the matter in finality by stating: "The convict is present. He tells that he is late by one day in coming back due to his illness. He had presented himself after lock up on 7th May, 1987 evening at the jail. This is his first offence. Taking a lenient view, he is awarded warning only."

10. In the opinion of this Court, the order dated 28th May, 1987 cannot be sustained in the eyes of law as per the provisions of Section 8(3) of the Act because such an order could only be passed if the petitioner failed to satisfy the Superintendent of the Jail that he was prevented by the sufficient cause from surrendering himself immediately after the expiry of the period for which he was released. In the present case, the petitioner gave the medical certificate and prima facie showed as to why he was prevented from surrendering. At one point of time the authorities wanted to verify this plea of the petitioner without issuing any reminder to the Civil Surgeon, Jalandhar, or adopting natural procedure to verify the correctness of the plea of the petitioner, the order of warning had been passed. Such an order in these circumstances cannot be sustained in the eyes of law.

11. To proceed further, this case can be viewed from different angles. Several jail offences can be committed by a convict. Some offences are so heinous. This type of offences can be committed qua the coconvicts or qua the jail authorities. But if the jail offences are so negligible or harmless, still it is an offence, the effect of such an offence should not go to such proportions that a right of a convict for furlough and premature release may be deprived for all times to come on the basis of such minor offences. However, the case has to be looked into from its own angles. The charge against the petitioner in the present case is that he reported his arrival late by one day for which he prima facie showed a genuine evidence, which has not been probed to the judicial proportions. In these circumstances, the order dated 28th May, 1987 should not become an impediment in the way of the petitioner so as to consider it for the purpose of furlough/premature release. Even otherwise the principles of natural justice would come into play. The alleged offence was committed in the year 1987. 11 years have elapsed since then. There is no history on the part of the petitioner that he repeated any jail offence after the year 1987. In these circumstances the order dated 28th May, 1987 should not create a hurdle in case the petitioner applies for furlough/premature release by specifying the purpose about his release.

12. With regard to delay, I do not subscribe to the submissions raised by the learned Deputy Advocate General because the cause of action has arisen to the petitioner when he applied for furlough and when he has been deprived of the said furlough by taking the assistance of an order dated 28th May, 1987, which in my view was not tenable. The petitioner, in fact, is not directly challenging the order dated 28th May, 1987. Rather he is challenging the decision of the authorities vide which the case of the petitioner for furlough is not being processed or declined by taking the shelter of the order dated 28th May, 1987. In these circumstances the delay aspect of this case cannot go for the benefit of the State.

13. In the light of my above discussion, I allow this petition by setting aside the order dated 28th May, 1987 or any other subsequent order vide which the case of the petitioner had been declined and give directions to the respondent authorities to consider and decide the case of the petitioner for grant of furlough according to law and on merits within three months from the receipt of the application for furlough, if he applies afresh.