
(2016) 07 P&H CK 0155
In the Punjab And Haryana At Chandigarh
Case No : Cr.W.P. No. 730 of 2016

Smt. Neki Nalwa	Vs	APPELLANT
State of Punjab		RESPONDENT

Date of Decision : 08-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 432

Citation : (2017) 1 CriCC 63 : (2016) CriLJ 4383

Hon'ble Judges : Mr. T.P.S. Mann and Mr. Gurmit Ram, JJ.

Bench : Division Bench

Advocate : Mr. Suram Singh Rana, Advocate, for the Petitioner; Dr. Deipa Singh, Addl. A.G, Punjab, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. T.P.S. Mann, J.(Oral)—The petitioner has filed the present petition under Article 226 of the Constitution of India, praying for issuance of an appropriate writ, order or direction to the respondents to initiate and consider her case for premature release and to release her on usual terms and conditions forthwith as per Government Instructions dated 04.04.2013 (Annexure P-1).

2. The petitioner was arrested in FIR No.338 dated 05.12.2005 under Sections 302, 420, 465, 467, 471, 474/34 and 120-B IPC registered at Police Station Mohali. Vide judgment and order dated 02.06.2012 learned Additional Sessions Judge, S.A.S. Nagar (Mohali) convicted her in the aforesaid FIR and sentenced her to undergo life imprisonment. Against her conviction and sentence, she has filed the appeal which stood admitted and is on the regular board of this Court.

3. According to the petitioner she has already undergone more than ten years and five months of actual sentence of imprisonment and about fourteen years after adding remissions. The Punjab Government has issued Instructions dated 04.04.2013 regarding premature release of the life convicts. As per the same, the case of a life convict is to be considered after he completes ten years" actual

sentence and fourteen years with remissions. In the case of woman, her case for premature release is to be considered after she completes an actual sentence of eight years and with remissions twelve years. Her case is thus, covered by aforesaid Instructions. Despite the same the Superintendent, District Jail, Rupnagar has refused to initiate her case for premature release on the ground that in terms of the Instructions dated 16.04.2013 issued by the Hon''ble Governor, Punjab the cases of life convicts for grant of premature release are not to be put up or recommended where the appeal filed by said convict is pending either in the Hon''ble Supreme Court of India or in the High Court.

4. Upon notice, short reply has been filed by the respondents. While placing reliance upon the Instructions issued by the Governor of Punjab, whereby her case is not to be forwarded for premature release as her appeal against conviction and order of sentence is still pending before High Court, it has been submitted by the learned State Counsel that the Jail Superintendent has rightly not entertained the application of the petitioner for premature release.

5. Having heard learned counsel for the parties and on going through the petition as well as the reply filed thereto, this Court finds that the case of the petitioner is not being recommended for consideration of her case for premature release on the ground that her conviction has not attained finality as the appeal filed by her is pending before this Court. Merely because the appeal filed by the petitioner is still pending for disposal is apparently not enough for the authorities concerned not to initiate and consider her case for grant of premature release. In *Harjit Singh @ Hare Ram v. State of Punjab and Others* 2015 1 RCR(Criminal) 370, a Division Bench of this Court after relying upon the judgment of the Hon''ble Supreme Court in *Narayan Dutt and others v. State of Punjab and another* 2011 2 RCR(Criminal) 140, has held that the case of a convict for being released prematurely could not be withheld merely for the reason that the appeal preferred by him/her was pending before the Appellate Court. On the other hand, if the case of the convict falls squarely under the instructions issued by the Governor of Punjab for premature release, the Government has to consider the same despite the pendency of the appeal before the Court.

6. In view of the above, order dated 06.05.2016 passed by the Superintendent, District Jail, Rupnagar declining initiation of the case of the petitioner for premature release on account of pendency of the appeal is set aside and the authorities concerned are directed to consider her case for premature release as per the policy applicable notwithstanding the pendency of appeal before this Court. Final decision in this regard be taken within three months from the date of receipt of certified copy of this order.

7. Petition is, accordingly, disposed of.