

(1996) 10 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 14247-M of 1996

Tejbin Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 09-10-1996

Acts Referred:

Citation : (1997) 1 RCR(Criminal) 228

Hon'ble Judges : Swatanter Kumar, J

Advocate : J.S. Ahlawat, Vijay K. Jindal, Advocates for appearing Parties

Judgement

Swatanter Kumar, J. (Oral)

1. In this petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, the petitioner challenges the validity of the order passed by the respondent dated 13/18.6.1996, by which the request of the petitioner for premature release was rejected.

Reply on behalf of the respondent has been filed.

2. The main defence taken by the respondents to support the impugned order has been referred to in paragraph 8 of the reply. It will be appropriate to reproduce relevant extract of paragraph 8 of the reply :

"That in reply to the contents of para 8 of the petition it is submitted that the petitioner committed four jail offences and he was awarded the punishment of "warning" in all the four cases. The punishments awarded to the petitioner are though of minor nature, still they reflect on the conduct of the petitioner during his confinement in the jail. The punishments were awarded to the petitioner after he was produced before the Superintendent of the jail and he was given ample opportunity for his defence and to produce the witnesses for his defence. The petitioner was awarded minor punishments of warnings, hence no judicial appraisal was called for. The jail offences committed by the petitioner have been considered while considering the premature release of the petitioner to ascertain

the over all conduct of the petitioner in jail during his confinement. Hence the submissions made by the petitioner in subparas (a) to (i) have no merits."

3. The contention of the learned counsel for the petitioner on the above facts is that the very stand taken by the respondents is contrary to the provisions of the Jail Manual and as such, cannot be permitted to stand the scrutiny of law. In explanation to para 639 of the Jail Manul Chapter 20, it is specifically stated that for the purpose of this rule which relate to remission for good conduct, offence punished only with warning shall not be taken into account. Further under clauses 5(1)(a)(b) of the Jail Manual the explanation, it has been specifically inserted to say that for the purpose of preparing rolls of prisoners under the above rules, (Rules relating to release of prisoners) the sentence awarded to the prisoner for an offence committed in prison or during suspension of sentence will not be taken into consideration. Thus, it is clear from the above provisions that the punishment awarded to the petitioner for jail offences cannot be taken into account to his disadvantage. It does not constitute a sustainable ground for an order of rejection for release of the prisoner on the temporary parole.

4. Another factor which has to be considered by this Court is that in accordance with the judgment of the Supreme Court in the case of Sunil Batra v. Delhi Administration reported as AIR 1980 Suprme Court 1579, any jail punishment would become final against the accused/detenu only upon its judicial appraisal by the Court of competent jurisdiction. It is admitted before this Court that the warnings issued to the petitioner were never subject matter of any judicial review by the District and Sessions Judge of the concerned area. This itself would amount to violation of the judgment of the Highest Court of the Land and would render the warnings issued to the petitioner ineffective and inconsequence.

5. The jail punishments have been made the basis for declining the release of the petitioner on temporary parole. Firstly these punishments are not in consonance with law and consequently in any case they could not form the valid basis for proper consideration of the case of the petitioner with regard to premature release. In this regard, reference can be made to the judgments of this Court in the cases of Joga Singh v. State of Haryana and others reported as 1995(3) RCR 151, Balwant Singh v. State of Haryana reported as 1995(3) RCR 322 and Bagla v. State of Haryana and others reported as 1996(2) RCR 64. Following this well settled principles of law, I have no hesitation in holding that the impugned order dated 13/18.6.1996 is liable to be set aside.

6. Another objection raised by the learned counsel for the respondents is that in accordance with the case of Maru Pam, Bhiwana Ram etc. v. Union of India reported as AIR 1980 SC 2147, this Court has no jurisdiction to grant release of the petitioner and it entirely falls within the domain of the administration. This proposition of law cannot be disputed. In fact, the principles laid down by the Supreme Court in the case of Maru Ram (supra) have been affirmed by the Supreme Court in the well reasoned judgments in the case of UT Chandigarh v. Charanjit Kaur, reported as 1996(2) RCC 228(SC) and State of Haryana and

others v. Devi Singh, Criminal Appeal No. 246 of 1993, decided on 22.2.1993. There is no dispute that normally this Court would not pass order directing the respondents to prematurely release the petitioner. When an order is found to be unsustainable, the Court undoubtedly has jurisdiction to set aside such an order and direct the concerned authority to consider the case of the petitioner afresh in accordance with law.

7. In the result, this petition is allowed and the impugned order dated 13/18.6.1996 Annexure P3 to this petition is set aside. The respondents are directed to consider the case of the petitioner afresh within eight weeks from the date on which the copy of this order is served upon them against receipt, in accordance with law and keeping in view the provisions of the Jail Manual and the judgments aforesaid stated. There shall be no order as to costs.