
(2010) 07 P&H CK 0033

In the Punjab And Haryana At Chandigarh

Case No : Criminal M. No. M-7845 of 2010 (O and M)

Trilok Chand

APPELLANT

Vs

The State of Haryana and another

RESPONDENT

Date of Decision : 21-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 161

Criminal Procedure Code, 1973 (CrPC) — Section 432, 432(1), 433, 482

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 20, 27, 32A, 33

Citation : (2010) 4 RCR(Criminal) 215

Hon'ble Judges : Ram Chand Gupta, J

Bench : Single Bench

Advocate : H.P.S. Aulakh, for the Appellant; P.M. Anand, Add. A.G., Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Ram Chand Gupta, J.—The present petition has been filed u/s 482 of the Code of Criminal Procedure (hereinafter to be referred as "Cr.P.C.") to release the petitioner prematurely after issuing directions to respondent No. 2 to verify the period undergone by the petitioner, who is a convict under Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter to be referred as "NDPS Act"), including remissions, granted under paras 633-A, 639, 644 of Punjab Jail Manual and under Article 161 of the Constitution of India and if after subtracting the period of parole, he has undergone the sentence awarded by the Court, he be released temporarily on bail to the satisfaction of the concerned Chief Judicial Magistrate during the pendency of SLP against the order of this Court, which is subjudice before Hon"ble Supreme Court with further prayer for issuance of direction to release the petitioner prematurely, as he has already completed seven years of actual sentence and with remissions more than twelve years of sentence.

2. It is case of the petitioner that he was convicted in FIR No. 641 dated

13.6.1997 u/s 20 of the NDPS Act, at Police Station City Gurgaon, by learned Special Judge, Gurgaon, vide judgment dated 15.10.1999 and sentenced to undergo rigorous imprisonment for a period ten years and to pay fine of Rs. 1,00,000/-. Petitioner already deposited the amount of fine. Criminal Appeal bearing No. 1153-SB of 1999, titled Tarlok Chand v. The State of Haryana, filed by the petitioner against the said judgment, has already been dismissed by this Court vide judgment dated 16.1.2008, Annexure P1.

3. Petitioner had maintained good conduct in jail while undergoing sentence and hence he had been given remissions as per notification issued by the Government of Haryana from time to time and hence, he has undergone seven years of actual sentence and more than twelve years including remissions.

4. It is further the case of the petitioner that however, remissions already granted, were withdrawn by the respondents, vide Annexure P2, in an illegal manner.

5. I have heard learned counsel for the parties and have gone through the whole record carefully.

6. It has been contended by learned counsel for the petitioner that inspite of bar created u/s 32-A of the NDPS Act, the remissions granted by Governor of the State, in exercise of powers under Article 161 of the Constitution of India, would be available to the convicts under NDPS Act, as the said provision does not effect the powers of Governor of the State to grant remissions. He has also referred to judgment rendered by this Court in Ekka Ram v. State of Punjab and others, in Crl. W. P. No. 839 of 2004, decided on 14.9.2005, Annexure P3. It has been further contended that the said decision was challenged by State of Punjab by filing a SLP before Hon''ble Supreme Court and however, the same is still pending.

7. It is further contended that a similar controversy came before this Court in Crl. M. No. M-51171 of 2006 (Mahi Ram v. the Secretary & Financial Commissioner and others), Annexure P4, in which the following directions were given to the respondent-State by this Court:-

i) Before releasing the petitioner, the concerned Superintendent of Jail will verify the period undergone by the convict and the remissions granted under Article 161 of the Constitution of India and that if after subtracting the period of parole, the convict has undergone the sentence awarded by the Court, he shall be released temporarily on bail to the satisfaction of the Chief Judicial Magistrate during the pendency of SLP filed by the State of Punjab in the case of Ekka Ram (SLP) Crl. No. 2496 of 2006 arising from the final judgment and order dated 14.9.2005 passed in Cr. W. P. No. 839 of 2004. The convict concerned will be granted the benefit of remission as per circular issued by the Government of Punjab under Article 161 after his conviction.

(ii) The petitioner will remain on bail during the pendency of SLP 2496 of 2006 in the Hon''ble Supreme Court. If as per judgment of Supreme Court benefit of

remissions under Article 161 is not granted the convict will surrender back in jail for undergoing the unexpired period of sentence.

(iii) At the time of release on bail, the petitioner will give an undertaking that he will not leave the country without prior permission of the Court and will keep peace and will continue informing the Chief Judicial Magistrate concerned of his residential address from time to time.

8. Learned counsel also placed reliance upon another decision of this Court in *Krishan and others v. State of Haryana and others*, in Crl. M. No. M-63825 of 2006. On the same point he has also placed reliance upon *Dara Singh v. State of Haryana*, in Crl. M. No. M-10966 of 2008 decided on 29.9.2008.

9. It is further contended that case of present petitioner is similar to that of *Mahi Ram's* case (supra) as well as *Dara Singh's* case (supra) as he has already undergone seven years of actual sentence and if remissions are included, then he becomes entitled for release.

10. It is further contended that as the matter is pending adjudication before Hon'ble Apex Court and if decision comes after some time, then the case of the petitioner would become infructuous, as by that time he would be released after undergoing the entire sentence even without remissions. Hence, it is contended that in the meantime, the petitioner be released temporarily on bail on the same terms as in *Mahi Ram's* case (supra).

11. On the other hand it has been contended by learned counsel for the respondents-State that petitioner has undergone only six years five months and seventeen days of sentence as on 13.4.2010. It is further contended that in view of bar created by Section 32-A of the NDPS Act for suspension, remission or commutation of sentence awarded under the Act, no remission can be granted to the petitioner. It is further submitted that vide orders regarding remissions issued by Governor of Haryana from time to time, remission was granted to the convicts in Haryana State u/s 432(1) of the Code of Criminal Procedure and not under Article 161 of the Constitution of India and that it has also been mentioned in the orders that no remission would be granted to persons convicted under NDPS Act. Hence, it is contended that the premature release policy of Haryana Government for convicts under the NDPS Act is not on similar footings as that of State of Punjab and hence, it is contended that petitioner cannot get any benefit of the decision in *Ekka Ram's* case (supra) or *Sukhwinder Singh alias Titoo v. State of Punjab* in Criminal Writ Petition No. 1157 of 2006 decided on 10.8.2007. It is further contended that a coordinate Bench of this Court has dismissed a similar petition on 20.3.2009, i.e. Crl. M. No. 1159 of 2008 titled *Gurmukh Singh v. State of Haryana and others*, Annexure P7.

12. It is pertinent to reproduce Section 32-A of the NDPS Act, which was inserted by Act No. 2 of 1989 w.e.f. 29.5.1989, which reads as under:

32A. No suspension, remission or commutation in any sentence awarded under

this Act - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 to 1974) or any other law for the time being in force but subject to the provisions of Section 33, no sentence awarded under this Act (other than section 27) shall be suspended or remitted or commuted.

13. The constitutional validity of the said provision was challenged before Hon"ble Apex Court in *Dadu @ Tulsidas v. State of Maharashtra* 2000 (4) RCR (Cri) 275. However, Hon"ble Apex Court held that the Section in so far as it takes away right of the executive to suspend, remit or compute the sentence is valid and intra vires the Constitution of India. The relevant paragraph reads as under:-

15.-----The distinction of the convicts under the Act and under other statutes, in so far as it relates to the exercise of the Executive Powers under Sections 432 and 433 of the Code is concerned, cannot be termed to either arbitrary or discriminatory being violative of Article 14 of the Constitution. Such deprivation of the Executive can also not be stretched to hold that the right to life of a person has been taken away except according to the procedure established by law. It is not contended on behalf of the petitioners that the procedure prescribed under the Act for holding the trial is not reasonable, fair and just. The offending Section, in so far as it relates to the Executive in the matter of suspension, remission and commutation of sentence, after conviction, does not, in any way, encroach upon the personal liberty of the convict tried fairly and sentenced under the Act. The procedure prescribed for holding the trial under the Act cannot be termed to be arbitrary, whimsical or fanciful. There is, therefore, no vice of unconstitutionality in the Section in so far as it takes away the powers of the Executive conferred upon it under Sections 432 and 433 of the Code, to suspend, remit or commute the sentence of a convict under the Act.

14. When similar matter came up before this Court in *Gurmukh Singh's* case (supra), affidavit was given by Inspector General of Prisons, Haryana, before a coordinate Bench of this Court that remissions have been granted to convicts in the State of Haryana u/s 432(1) of the Cr.P.C. and not under Article 161 of the Constitution of India and that it has also been specifically mentioned that no remission will be granted to persons convicted under NDPS Act.

15. Learned counsel for the petitioner has failed to show this Court any of the circular issued by Governor of Haryana under Article 161 of the Constitution of India granting remission of which benefit has not been given to the petitioner.

16. Hence, in view of these facts and in view of specific stand taken by the respondent-State of Haryana, *Ekka Ram's* case (supra), or *Sukhwinder Singh alias Titoo's* case (supra) are not applicable in the case of State of Haryana. More over, no Rule or instruction can be said to be validly issued, if the same is not in accordance with the statutory provisions.

17. Hence, even if an instruction has been issued which is violative of Section 32-A of the NDPS Act, no benefit of the same can be granted to the petitioner-convict. Petitioner has only undergone six years, five months and seventeen days

of sentence as on 13.4.2010, hence, he has not undergone the entire period of sentence awarded.

18. Hence, in view of these facts, no direction can be issued by this Court for premature release of the petitioner-convict, as prayed for.

19. The present petition is dismissed.