

(1997) 02 P&H CK 0011
In the Punjab And Haryana At Chandigarh
Case No : Crl M. No. 16532 (M) of 96

Ved Pal

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 14-02-1997

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1997) 1 ILR (P&H) 451

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Advocate : P.C. Chaudhary, for the Appellant; Sailender Singh, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

P.K. Jain, J.—This petition has been filed under Articles 226 ad 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") for issuance of appropriate directions to Respondent No. 1 to consider and decide the pre-mature release case of the Petitioner pending with it since 12th July, 1996.

2. The Petitioner was convicted for the offence under Sections 302/302/34 I.P.C., and sentenced to undergo life imprisonment by judgment/order dated 9th February, 1987. He has undergone the following sentence as on 14th October, 1996: -

Years

Months

Days

(i) Under Trial period 14th September, 1986 to 8th February, 1987

0

4

28

(ii) Sentence undergone 9th February, 1987 to 14th October. 1996

9

8

4

Total:

10

01

02

Remission earned :

5

03

29

The conduct and behaviour of the Petitioner as an inmate of the jail has been good and satisfactory; for which he has earned remissions. He did not commit any jail offence nor he was ever punished by the authorities. He enjoyed parole and furloughs peacefully and always surrendered in time. As per instructions dated 4th February, 1993, a life convict is required to undergo 10 years actual sentence including undertrial period and a total sentence of 14 years including remissions. It has been stated in the petition that the Petitioner has fulfilled the necessary conditions as laid down in the said instructions which are constitutional in nature. The case for his pre-mature release was processed by Respondent No. 3 and sent to Respondent No. 2,--vide letter dated 12th March, 1996. but the same is not being decided by the Respondents for the reasons best known to them. Hence this petition.

3. In their return, the Respondents have not disputed the factual position as stated above: It has also been admitted that as per instructions dated 19th October, 1991. modified by the instructions dated 4th February 1993, the Petitioner is entitled to be considered for his pre-mature release as he has completed the requisite period of 10 years actual sentence including the undertrial period and total sentence of 14 years including remissions. The sole ground on which the Respondents have opposed the present petition is the judgment 01 a Single Bench of this Court in Crl. Misc. No. 578-M/1996 (Jai Singh v. State of Haryana and Ors.), decided on 9th August, 1996, wherein it has been observed that a life convict will have to undergo 14 years actual sentence including the parole as per requirement of Section 433-A of the Code.

4. I have heard the Learned Counsel for the parties and have also perused the judgment of the Single Bench of this Court in Jai Singh's case (supra).

5. Shri P.C. Chaudhary, Advocate, Learned Counsel for the Petitioner has argued that the instructions dated 19th October, 1991 as modified by instructions dated 4th February, 1993 have been issued by the Governor of the State of Haryana in exercise of his powers conferred upon him by Article 161 of the Constitution of India, which cannot be affected by any legislative measure, muchless Section 433-A of the Code. Reliance has been placed by the Learned Counsel upon a well-known judgment of the apex Court rendered in *Menu Ram v. Union of India* AIR 1980 S.C 2145..

6. Shri Sailder Singh, Deputy Advocate General, Haryana, while appearing on behalf of the Respondents, has argued that in view of the judgment of this Court in Jai Singh's case (supra), the case of the Petitioner for his pre-mature release has not been processed further, although the same is fully covered by the instructions issued by the State of Haryana as stated above.

7. Thus, the sole "question which remains to be considered in the present case is as to whether the provisions of Section 433A of the Code will override the instructions regarding the pre-mature release of convicts issued by the Governor of the State in exercise of his powers conferred upon him by Article 161 of the Constitution of India.

8. While considering "the aforesaid question in Jai Singh's case (supra), a Single Bench of this Court observed as under: -

In nutshell, what emerges is that instructions Annexure P. 4 cannot override the legislative intent as reflected in Section 433-A Code of Criminal Procedure. While considering the case of the Petitioner for pre-mature release, the Respondents will take into account whether he has remained in Jail actual for 14. year inclusive of paroles, excluding of course remissions. At the cost of repetition, it has to be observed that the provisions of Section 433 A Code of Criminal Procedure cannot be rendered nugatory either by the exercise of powers u/s 432 or 433 Code of Criminal Procedure or under Article 72 or 161 of the Constitution of India as the case may be.

9. Respectfully but regretfully I beg to differ. It appears that the pointed attention of my learned Brother was not drawn to the law laid down by the Apex Court in *Maru Ram's* case (supra). In paras 59 and 60, their Lordships explained the law as under:-

It is apparent that superficially viewed, the two powers, one constitutional and the other statutory, are co-extensive. But two things may be similar but not the same. That is precisely the difference. We cannot agree that the power which is the Creature of the Code can be equated with a high prerogative vested by the Constitution in the highest functionaries of the Union and the States. The source is different the substance is different, the strength is different, although the

stream may be flowing along the same bed. We see the two powers as far from being identical, and obviously, the constitutional power is "untouchable" and unapproachable and cannot suffer the vicissitudes of simple legislative processes. Therefore, Section 433-A cannot be invalidated as indirectly violative of Arts, 72 and 161. What the Code gives, it can take, and so an embargo on Sections 432 and 433 (a) is within the legislative power of Parliament. Even so, we must remember the constitutional status of Article 72 and 161 and it is common ground that Section 433-A does not and cannot affect even a wee-bit the pardon power of the GOVERNOR OR the President. The necessary sequel to this logic is that notwithstanding Section 433-A of the President and the Governor continue to exercise the power of commutation and release under the aforesaid Articles."

In para 65 of the judgment, their Lordships also observed: -

The proper thing to do, if Government is to keep faith with the founding fathers, is to make rules for own guidance in the exercise of the pardon power. Keeping, of course, a large residuary power to meet special situations or sudden developments. This will exclude the vice of discrimination such as may arise where two persons have been convicted and Sentenced in the same case for the same degree of guilt but one is released and the other refused, for such irrelevant reasons as religion, caste, colour or political loyalty.

10. From the law as enunciated and expounded by their Lordships in *Marti Ram's* case (*supra*), it is evident that Section 433-A of the Code does and cannot affect even a wee-bit the pardon power of the Governor or the President. Resultantly, notwithstanding the provisions of Section 433-A, the President and the Governor continue to exercise of the powers of commutation, remissions and release under Articles 72 and 161 of the Constitution of India. The only fear expressed by their Lordships in para 65 of the judgment is that these powers may not be misused. To avoid the vice of discrimination, the Government is required to make rules for its own guidance in exercise of the pardon power. Therefore, the observations made by the learned Single Judge of this Court in *Jai Singh's* case (*supra*) do not hold good in view of the express law as enunciated by the Apex Court in *Maru Ram's* case, reproduced above.

11. The learned Deputy Advocate General, Haryana, has not disputed the fact that the instructions dated 19th October, 1991, as modified by the instructions dated 4th February, 1993, have been issued by the Governor of the State of Haryana in exercise of his powers conferred upon him by Article 161 of the Constitution of India. It is also not disputed that under these instructions, the Petitioner is required to undergo actual sentence of 10 years including undertrial period and a total sentence of 14 years including remissions. It is also not disputed that the Petitioner has fulfilled the said criteria as laid down in these instructions. It has already been stated that the provisions of Section 433-A of the Code would not affect the powers of a Governor conferred upon him under Article 161 of the Constitution of India in issuing instructions or guidelines for pre-mature release of the convicts.

12. As a result of the above discussion, this petition is allowed. The Respondents are directed to consider the pre-mature release case of the Petitioner, in the light of the observations made above, within the period of one month from the date of the receipt/production of a copy of this order.