

State of Punjab

Vs

Babu Singh

Criminal Appeal No. 294 of 1991

(L. M. Sharma, J. S. Verma JJ)

16.04.1991

ORDER

1. We have heard the learned counsel for the parties. The delay in filing the special leave petition is condoned and leave is granted.
2. The respondent who was undergoing sentences of life imprisonment, had served a period of eleven and a half years when he made an application for premature release. The Punjab and Haryana High Court by the impugned order issued a direction to release the respondent on bail, observing further that if his mercy petition, which was pending, is dismissed, he will have to surrender.
3. The High Court has not taken into consideration the provisions of Section 433-A of the Criminal Procedure Code while passing the order. A week back we have allowed a criminal appeal against a judgment of the Punjab and Haryana High Court in another case directing premature release on account of good conduct of the respondent in jail serving a life sentence although he had actually been in jail for a period of nine years only. We set aside the order as the provisions under Section 433-A had not been taken into consideration, and remitted the matter to the High Court for reconsideration in accordance with the provisions of Jail Manual. The learned counsel for the respondent in the present appeal attempted to distinguish the case on the ground that here the respondent has been only enlarged on bail and has not been finally released. We do not think that Section 433-A, which is quoted below, is inapplicable in the present case :

"433-A. Restriction on powers of remission or commutation in certain cases. - Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment."

The respondent in his writ petition before the High Court relied upon three instructions (Annexures P-1 to P-3) in support of his claim that he is entitled to premature release. Earlier the High Court had directed the mercy petition, pending before the Governor, to be decided within a period of three months. This was not done and a reply was filed on behalf of the State explaining the circumstances under which the matter remained pending. In this background the impugned order was passed. The judicial proceeding dealing with the conviction and sentence of the accused had been earlier concluded, and the order of his release on bail was passed while finally disposing of the writ petition alleging delay in disposal of the mercy petition. In order words, no case is now pending

before the court, and it cannot be suggested that the order of the respondent's release on bail has been passed as an interim measure pending the decision of a case before the court. In such a situation the provisions of Section 433-A are attracted. The words in the section quoted above and emphasised by us are wide in their application and cannot be restricted as suggested by the learned counsel for the respondent. We, therefore, allow the appeal, set aside the impugned judgment and remit the case to the High Court for reconsideration of the writ petition confined to its limited scope in accordance with law. The respondent shall surrender without delay and only thereafter he shall be allowed to press his application before the High Court.

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