

State of Punjab

Vs

Kesar Singh

Criminal Appeal No. 751 of 1996

(Dr. A. S. Anand, S. B. Majmudar JJ)

22.07.1996

### JUDGMENT

1. Special leave granted. The respondent was convicted for an offence under Section 302/34 IPC and sentenced to undergo life imprisonment by the judgment and order dated May 28, 1987. After he had undergone a little more than 8 years of sentence he filed a petition under Section 482 of the Code of Criminal Procedure in the High Court of Punjab and Haryana at Chandigarh seeking premature release. The High Court by the impugned order dated January 18, 1986 considered the case on its merits and allowed the petition directing the release of the respondent forthwith. The State is aggrieved of the order dated January 18, 1986, hence this appeal.

2. We have heard learned counsel for the parties. In our opinion the direction given by the High Court was not at all appropriate or permissible in law. The mandate of Section 433 Cr. P.C. enables the Government in an appropriate case to commute the sentence of a convict and to prematurely order his release before expiry of the sentence as imposed by the courts. Clause (b) of Section 433, Cr. P.C. provides that the sentence of imprisonment for life may be commuted for imprisonment for a term not exceeding 14 years or fine. Undisputedly, the respondent had not completed 14 years sentence when he filed the petition under Section 482 Cr.P.C. seeking premature release. The direction of the High Court therefore to prematurely release the respondent and set him at liberty forthwith could not have been made. That apart, even if the High Court could give such a direction, it could only direct consideration of the case of premature release by the Government and could not have ordered the premature release of the respondent itself. The right to exercise the power under Section 433 Cr. P.C. vests in the Government and has to be exercised by the Government in accordance with the rules and established principles. The impugned order of the High Court cannot, therefore, be sustained and is hereby set aside.

3. This order shall, however, not come in the way of the respondent for approaching the Government for commutation of his sentence and premature release in terms of the order issued by the Governor of Punjab on March 6, 1985. As and when such an application is made, the State Government shall decide that application on merits uninfluenced by this order or by the observations made by the High Court in the impugned order. Appeal allowed.