

(1992) 03 P&H CK 0018

High Court Of Punjab And Haryana At Chandigarh**Case No:** Criminal Miscellaneous No. 10456/M/91

Chaman Lal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: March 5, 1992**Acts Referred:**

- Constitution of India, 1950 - Article 14, 161, 19, 21, 226
- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Penal Code, 1860 (IPC) - Section 302, 307

Citation: (1992) CriLJ 2065 : (1992) 3 RCR(Criminal) 309**Hon'ble Judges:** Harmohinder Kaur Sandhu, J**Bench:** Single Bench**Advocate:** V.K. Jindal, for the Appellant; Randhir Singh, DAG, for the Respondent**Final Decision:** Allowed

Judgement

@JUDGMENTTAG-ORDER

Harmohinder Kaur Sandhu, J.

Chaman Lal Petitioner was tried and convicted for offences Under Sections 302 and 307 of the IPC by learned Additional Sessions Judge, Sirsa and was sentenced to undergo imprisonment for life for the offence of murder vide judgment dated 29-10-1982. He was also awarded imprisonment for five years for the offence u/s 307, IPC and both the sentences were to run concurrently. Since the day of his arrest he was confined in jail and he had undergone actual sentence for a period of 10 years and 5 months and 23 days. He was granted remissions for 5 years 6 months 18 days. The State Government had issued various guidelines for exercise of the powers under Article 161 of the Constitution, for grant of premature release to the convicts and the instructions contained in Annexure P/3 were applicable to the case of the petitioner who had undergone more than 81/2 years actual sentence, and more than 14 years sentence including remissions. Premature release case of the

petitioner was forwarded to the Government and he was ordered to be released on 11-4-1991 vide order copy of which is Annexure P/4. Certain conditions were imposed as per this order for the release of the petitioner. After the passing of this order the complainant party became quite active and by exercising their influence in the political circle got another order passed on 19-7-1991 copy of which is Annexure P/5. On the basis of this order the case of the petitioner for his premature release was to be reviewed next year. The petitioner has assailed the order Annexure P/5 on the grounds that it was arbitrary, illegal and violative of Articles 14, 19 and 21 of the Constitution. Order Annexure P/4 was passed in accordance with law in the exercise of powers under Article 161 of the Constitution by the Governor of the State of Haryana and that order had not been revoked or amended. He has thus filed the present petition u/s 482 of the Cr. P.C. read with Article 226/227 of the Constitution of India for his premature release.

2. In the return filed by the respondents it was pleaded that the premature release case of the petitioner was duly considered on 11-4-1991 and then it was reconsidered on 19-7-1991 and in view of the facts and circumstances of the case as well as the manner in which heinous and brutal crime of murder was committed it was ordered that his case be considered again after a period of one year. This fact was, however, admitted that the petitioner had undergone actual sentence of 9 years 10 months 9 days and his period of sentence with remission came to 15 years 5 months 12 days. It was, however, pleaded that the order dated 19-7-1991 was quite legal and was not violative of any provisions of the Constitution of India. The order Annexure P/4 had not become operative and the same was reviewed and revised in the light of latest instructions. This order was passed in supersession of order Annexure P/4 and that was the final order which was operative.

3. I have heard the counsel for the parties.

4. The case of the petitioner was to be considered in view of the guidelines contained in Annexure P/3. These were the instructions applicable to his case and his case was covered by Clause (c) of these instructions which related to adult life-convicts not convicted for heinous crimes as defined in Clause (d). As per these instructions his case was to be considered after completion of 8 1/2 years of substantive detention including under-trial period and total period of such detention including remissions was not to be less than 14 years. The petitioner had undergone requisite period of sentence. He moved Criminal Misc. No. 11266/M of 1990 for his premature release and in this petition order copy of which is Annexure P/6 was passed in the following terms :--

Respondent State would decide the premature release case of the petitioner within four months from today.

This order was passed on December 19, 1990 and according to it premature release case of the petitioner was to be decided by April, 1991, Thereafter the State

Government passed order Annexure P/4 on 11-4-1991 remitting the unexpired portion of the sentence of prisoner Chaman Lal son of Satti Dass. This order was passed by the Governor of Haryana in exercise of powers conferred by Article 161 of the Constitution of India. Certain conditions were imposed for the release of the petitioner. As the order was passed in April, 1991 so it appears that it was passed in pursuance of the directions issued by this Court vide order Annexure P/6. The petitioner had not violated any of the conditions imposed upon him as he was not released at all.

5. On 19-7-1991 order Annexure P/5 was passed by the State authorities according to which the State Level Committee had recommended the case of premature release of the petitioner but the Government after considering the recommendations of the committee decided that the matter may be reviewed next year. This order is absolutely silent about the reasons why the case of the petitioner was deferred for a period of one year when an order regarding premature release of the petitioner had already been passed in the month of April, 1991 under Article 161 of the Constitution. Vide order Annexure P/5 the order Annexure P/4 was neither superseded nor revoked or amended. In fact no reference to the earlier order is made in the later order. It is not explained as to how the case was deferred for consideration after a year when the order regarding release of the petitioner had already been made by the Governor and the State Level Committee had also recommended the release of the petitioner. The petitioner fulfilled all requisite conditions for grant of premature release as per instructions Annexure P/3. He had not committed any jail offence and he had been enjoying parole and furlough. The earlier order of release could be revoked only if some exceptional circumstances came to knowledge, but no such circumstance is mentioned in Annexure P/5. The earlier order was passed by the Governor while the later order was passed by the Financial Commissioner and Secretary to Government Haryana Jail Department. In view of the order Annexure P/4, the subsequent order Annexure P/5 order cannot be considered as legal or valid when it was passed without reference to the prior order. It appears that question of liberty of the petitioner was taken in a most casual manner. Since order Annexure P/4 has not been revoked, the same subsists and the petitioner is entitled to his premature release on the basis of the same.

6. For the reasons recorded above, I accept this petition and direct the respondents to release the petitioner forthwith in pursuance of the order Annexure P/4 on the terms and conditions already mentioned therein.