

ITEM NO.1

Virtual Court 1

SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No.1003/2017

PYARE LAL

Appellant(s)

VERSUS

STATE OF HARYANA

Respondent(s)

Date : 08-05-2020 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Appellant(s) Mr. Shikhil Suri, Adv.
Mr. Shiv Kumar Suri, AOR

For Respondent(s) Mr. Amit Kumar, Adv.
For Mr. Sanjay Kumar Visen, AOR

UPON hearing the counsel the Court made the following
O R D E R

On 29.04.2020, following order was passed by this Court:

"Heard Mr. Shikhil Suri, learned Advocate for the appellant and Mr. Amit Kumar, Advocate for the State.

According to Mr. Suri, after having completed more than 8 years of actual sentence and he being aged above 75 years, in accordance with the existing policy of the State Government, the appellant was prematurely released in 2019.

Learned counsel for the State wants to verify the situation.

We, therefore, direct the State to file an appropriate affidavit indicating:

- a) Whether the appellant has been released in accordance with any policy; and
- b) Whether that policy permits premature release even before completion of actual sentence of 14 years in connection with an offence punishable under Section 302 IPC.

Learned counsel for the State shall file an appropriate affidavit by 05.05.2020 enclosing the concerned policy for the perusal of the Court.

List the matter for further consideration on 08.05.2020."

Accordingly, the concerned Policy has since then been placed on record by the learned counsel for the State.

Said Policy states as under:

"ORDER OF THE GOVERNOR OF HARYANA

"On the occasion of Independence Day i.e. 15th August 2019, the Governor of Haryana in exercise of the powers conferred by Article 161 of the Constitution of India, is pleased to grant special remission to prisoners who are undergoing sentence as a result of their conviction by the Courts of Criminal Jurisdiction in the State of Haryana. The special remission granted will be as under:

Category of Convicts

The convicts who have been sentenced for life and are 75 years or above in case of male and of 65 years or above in case of female as on 15.08.2019 and have completed eight years of actual sentence in case of male convicts and six years of actual sentence in case of female convicts including undertrial period and excluding parole period and whose conduct has remained satisfactory during confinement and who have not committed any major jail offence in the last two years be released forthwith.

- 1) The convicts who have been sentenced for punishment other than life sentence and are of 75 years and above in case of male and 65 years and above in the case of female as on 15.08.2019 and have been completed 2/3rd actual sentence including undertrial period and excluding parole period and whose conduct has remained satisfactory during confinement and who have not committed any major jail offence in the last two years be released forthwith.

Note:- The age of above convicts should be calculated according to Matriculation certificate or birth certificate and in absence of both it will be calculated according to the judgment of the trial Court and the Superintendent jail will ensure correctness of age.

- 2) The remission will not be granted to prisoners convicted for the following offences:
- i) Who have been sentenced to death and their sentences have been commuted to life sentence.
 - ii) Abduction and murder of a child below the age of 14 years.
 - iii) Rape with murder.
 - iv) Dacoity or Robbery
 - v) Where the Courts have issued any specific order regarding confinement.
 - vi) Convicts under Terrorist and Disruptive Activities (Prevention) Act, 1987, Official Secrets Act, 1923, Foreigners Act, 1948, Passport Act, 1967, Sections 2 & 3 of the Criminal Law Amendment Act, 1961 and Sections 121 to 130 of the Indian Penal Code, 1860.
 - vii) The sentence of imprisonment imposed in default of payment of fine shall not be treated as substantive for the purpose of grant of this remission.
 - viii) Under NDPS Act in view of Section 32A of the NDPS Act, 1985
 - ix) Detenues of any class
 - x) Pakistan nationals
 - xi) The persons imprisoned for failing to give security for keeping peace for their good behavior under Sections 107/109/110 of the Criminal Procedure Code, 1973.
 - xii) Cases of prisoners convicted for counterfeiting currency notes (FICN) cases under section 489 (A to E) of the Indian Penal Code.
 - xiii) Convicted and sentenced under Section 138 of the Negotiable Instruments Act, 1881.
3. This remission will not be granted to the convicts who are on bail on the day of granting this remission. However, they may be released if they fulfill the above conditions as on 15th August 2019, after they surrender in the jails in compliance with orders of Hon'ble Courts."

In terms of the aforesaid Policy, those convicts who stood convicted for life sentence and are above the age of 75 years (in case of male convicts) and have completed 8 years of actual

sentence, are entitled to be conferred the benefit of remission. It is in terms of this policy that the present appellant came to be released after completing 8 years of actual sentence.

Prima facie the aforesaid Policy appears to be in conflict with Section 433A of the Code of Criminal Procedure, 1973.

Mr. Shikhil Suri, learned counsel appearing for the appellant however submitted that the Policy has been framed pursuant to the power conferred upon the Governor of the State under Article 161 of the Constitution of India and, as such, would not be hit by the principles emanating from Section 433A of the Code.

We issue notice to the State Government to respond:

- a) Whether a Policy could be framed under Article 161 of the Constitution of India, which would run counter to the mandate of Section 433A Cr.P.C.; and
- b) Whether all individual cases in which benefit was granted in respect of the aforesaid Policy were placed before the Governor of the State and whether facts of individual cases were considered by the authority before granting benefit of remission.

Let the response be filed by the competent officer of the State within two weeks from today.

List the matter for further consideration on 06.07.2020.

(MUKESH NASA)
COURT MASTER

(ANAND PRAKASH)
BRANCH OFFICER