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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-5238-2020 (O&M)
Date of Decision: 19th August, 2020

SAVITRI

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN

Present: Mr. Arjun Sheoran, Advocate for the Petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Dr. S. Muralidhar, J.

1. This is a petition challenging the order dated 5th June, 2020 of the Divisional Commissioner, Hisar, ('Divisional Commissioner') rejecting the Petitioner's application for temporary release/parole, on the grounds that the trial Court i.e. the Court of the Additional Sessions Judge, Hisar, has by an order dated 16th October 2018 awarded her a sentence of imprisonment for life i.e. whole of her natural life, without any remission, consequent to her conviction for the offences under Sections 302, 343 and 120-B of the Indian Penal Code in FIR No. 429 of 2014 registered at Police Station Barwala.

2. It has been argued by Mr. Arjun Sheoran, learned counsel for the Petitioner, that the reasons given in the impugned order dated 5th June, 2020 of the Divisional Commissioner are contrary to the law laid down by

the Supreme Court in ***Union of India v. V. Sriharan @ Murugan (2016) 1 SCC 1***. In other words, he submitted that the trial Court could not have while awarding the sentence directed that the Petitioner would not be entitled to any remission and further that her request for temporary release/parole could not have been refused on that ground. He pointed out that the Petitioner had recently lost her husband and her two sons had abandoned her. He referred to the photographs enclosed with the petition to show that the Petitioner's house needed urgent repairs for which reason she had sought parole for four weeks.

3. On the other hand, Mr. Ankur Mittal, learned Additional Advocate General, Haryana, to begin with, pointed out that the Petitioner sought parle for a period of four weeks on the ground that her house needed repairs and this request was referrable to Section 3 (1) (d) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 ('Act') read with Rule 8 (iii) of the Haryana Good Conduct Prisoners (Temporary Release), Rules, 2007 ('Rules'). He further pointed out that in terms of Rule 4 of the Rules, the Petitioner shall be entitled to apply for parole only after completing one year of imprisonment after conviction and has earned her first annual god conduct remission (AGCR) under the Act. According to Mr. Mittal since the sentence awarded by the trial Court specifically states that the Petitioner should serve life sentence for her entire natural life, without remission, the question of her being eligible for AGCR would not arise and consequently, she would be ineligible to be considered for parole. In this context he referred to a recent judgment dated 3rd July, 2020 of a

learned Single Judge of the High Court of Delhi in ***Sanjay Kumar Valmiki v. State*** [W.P.(Crl.) 2049 and 682 of 2019], and submitted that the Divisional Commissioner cannot be stated to have committed any error as long as the order on sentence passed by the trial Court, and which is under appeal before this Court, stood.

4. On the last date of hearing, Mr. Sheoran, learned counsel for the Petitioner had sought time to place on record copy of an order passed by the Superintendent, Central Jail, Ambala granting parole to one of the co-convicts in a connected FIR.

5. The Petitioner has, along with an application CRM-W-731-2020, placed on record a copy of an order dated 7th January, 2020 passed by Superintendent, Central Jail, Ambala granting parole/temporary release to co-convict Pawan in a connected FIR No. 430 dated 19th November, 2020, registered at Police Station, Barwala, Hisar. It has been pointed out that Pawan too had been sentenced to undergo rigorous imprisonment for life without remission till natural death and yet, in his case, not only was parole granted, but, in fact, now stands extended as a result of the orders of the High Powered Committee ('HPC').

6. The above submissions have been considered. To being with, the applicable statutory provision and the Rules may be referred to. Sections 3 (1) (d) and 10 (2) (d) of the Act which are relevant for the present purpose read as under:

> **"3. Temporary release of prisoners on certain grounds.** - (1) The State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the Official Gazette and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2), any prisoner, if the State Government is satisfied that –
> …….
> (d) it is desirable to do so for any other sufficient cause."

> "**10. Power to make rules.** The State Government may, by notification, by notification make rules for carrying out the purposes of this Act.
> (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—
> ……
> (d) the conditions on which and the manner in which prisoners may be released temporarily under this Act."

7. Rules 4 and 8 (iii) of the Rules, which are also relevant, read thus:

> **"4. Eligibility. Section 10(2)(d).** - (1) A prisoner shall be entitled to apply for parole only after he has completed one year of his imprisonment after conviction and has earned his first annual good conduct remission under the Act."

> "**8. Sufficient cause.** sections 3(1)(d) and 10(2)(d). - Under section 3(1)(d) "sufficient cause" may be considered from amongst the following reasons, namely:-
> ……
> (iii) house repairs/new construction of house owned by the convict. Parole for house repair shall be granted only once, in three years;"

8. It is thus seen that in terms of Rule 4 and 8 (iii) of the Rules read with Section 3 (1) (d) of the Act the earning of the first AGCR, apart from completing one year of imprisonment post conviction, is a must. It is also correct that the sentence awarded to the Petitioner by the trial Court in the instant case is one of "rigorous imprisonment for life, without any remission." She has been, along with her co-convicts, "sentenced to imprisonment for life of their natural death (*sic)*" meaning thereby that she should remain in prison for the rest of her natural life. The Divisional

Commissioner who passed the impugned order rejecting the Petitioner's request for parole was, therefore, constrained to apply Rule 4 in light of the sentence awarded by the trial Court.

9. The question whether the trial Court could have passed such a sentence would undoubtedly be one of the questions that would arise for consideration in the Petitioner's criminal appeal against her conviction and sentence which is pending before this Court. However, it is unlikely that the said appeal, which would have to be heard with the connected appeals of her co-convicts, can be taken up for hearing in the near future. Further, this would mean that till such question is decided, the authorities would be precluded from considering any of her applications for release on parole. It would be unreasonable, in the circumstances, for the examination of this question to be postponed to the hearing of the appeal, particularly since, as will be seen hereafter, the legal position in this regard is clear.

10. The legal position with regard to the power of the trial Courts to award sentences with riders has been made explicit in the Constitution Bench judgment of the Supreme Court in ***V. Sriharan*** *(supra)* in paras 103 to 105, in the following words:

> "103. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial Court and confirmed by the Division Bench of the High Court, the concerned convict will get an opportunity to get such verdict tested by filing further appeal by way of Special Leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life

> imprisonment when comes under the scrutiny of the Division Bench of the High Court, **it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed**.
>
> 104. We, therefore, reiterate that, the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other Court in this country. To put it differently, **the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court**.
>
> 105. Viewed in that respect, we state that the ratio laid down in *Swamy Shraddananda* [*(2008) 13 SCC 767*] that a special category of sentence; instead of Death; for a term exceeding 14 years and put that category beyond application of remission is well founded and we answer the said question in the affirmative. We are, therefore, not in agreement with the opinion expressed by this Court in *Sangeet and Anr. v. State of Haryana, 2013 (2) SCC 452* that the deprival of remission power of the Appropriate Government by awarding sentences of 20 or 25 years or without any remission as not permissible is not in consonance with the law and we specifically overrule the same." (emphasis supplied)

11. Thus, after the judgment of the Constitution Bench of the Supreme Court in ***V. Sriharan*** *(supra)*, it is not open to a court inferior to the High Court and Supreme Court, while awarding a sentence of life imprisonment under the Indian Penal Code to further provide for any specific term of incarceration, or till the end of a convict's life, or to direct that there shall be no remission, as an alternate to the death penalty. That power is

available only with the High Courts and the Supreme Court. Consequently, the trial Court, in the instant case, while awarding the Petitioner the sentence of rigorous imprisonment for life could not have added the riders that it should be for the rest of her natural life or that she would not be entitled to any remission.

12. This Court also notes that in the judgment dated 3rd July, 2020 of the learned Single Judge of the High Court of Delhi in ***Sanjay Kumar Valmiki v. State*** (*supra*) it has been noted to begin with that in the appeal filed by that prisoner against his conviction and sentence, the Division Bench (DB) of that High Court had in its judgment dated 24th May 2018 in Criminal Appeal No. 773 of 2015 confirmed his conviction. As far as the sentence was concerned it observed that in view of law laid down in ***V. Sriharan*** (*supra*) " it is clear that while the learned ASJ was empowered to award, to the Appellant, sentence of imprisonment for life, he did not possess the jurisdiction to caveat the said punishment to the further stipulation to the effect that, for 25 years, the appellant would not be entitled to seek remission." Nevertheless, the DB in the exercise of its powers as a High Court awarded the same sentence.

13. The learned Single Judge of the High Court of Delhi in ***Sanjay Kumar Valmiki v. State*** (*supra*) drew a distinction between the request for grant of parole and one for furlough and noted that the request of Sanjay Kumar Valmiki in that case was for furlough and not parole. The judgment then proceeded to discuss the requirement under the governing statute and Rules

applicable to Delhi (which are more or less similar to the ones applicable in Haryana) of the earning of AGCR as a pre-condition to the grant of parole. The judgment concluded that while, in the circumstances where it was the High Court that had awarded the modified sentence of imprisonment for life for a minimum of 25 years without remission, the rejection of the plea for furlough was justified, it was clarified (in para 21) that the petitioners there would "be entitled to seek parole even for re-establishing social and family ties."

14. Therefore, in terms of the law explained by the Constitution Bench of the Supreme Court in ***V. Sriharan*** *(supra)*, the trial Court in its order dated 16th October 2018 awarding the sentence to the Petitioner of rigorous imprisonment for life was in error in adding the rider that it would be for the remainder of her natural life and without any remission.

15. With this being the clear legal position, the impugned order dated 5th June 2020 passed by the Divisional Commissioner, Hisar rejecting the Petitioner's application for parole on the above grounds is legally unsustainable and is hereby, set aside. The Petitioner's application for parole is remitted to the Divisional Commissioner, Hisar to consider afresh the Petitioner's application for parole in accordance with law. The further ground pointed out by the Petitioner that Pawan, a convict in the related FIR, has been granted parole will be taken note of by the Divisional Commissioner while passing an order afresh on the Petitioner's application for parole. The fresh order be passed not later than 31st August, 2020 and

communicated to the Petitioner forthwith and in any event not later than 2nd September 2020. If aggrieved by such order, it will be open to the Petitioner to seek appropriate remedies available to her in accordance with law. The petition is disposed of in the above terms.

16. The Court is informed that notwithstanding the clear legal position explained in ***V. Sriharan*** *(supra)*, the trial Courts have been adding riders to orders on sentence passed by them similar to what the trial Court did in this case. Accordingly, the Court directs that a soft copy of this judgment together with the judgment of the Constitution Bench of the Supreme Court in ***V. Sriharan*** *(supra)* be circulated by the Chandigarh Judicial Academy through email to all the judicial officers as well as the Jail authorities in the States of Punjab and Haryana and the Union Territory of Chandigarh.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

19th AUGUST, 2020
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Whether speaking/reasoned Yes/No
Whether reportable Yes/No