

Punjab-Haryana High Court

Shish Ram vs State Of Haryana And Another on 18 December, 2008

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Crl. Misc. No. M-33449 of 2008

Date of Decision: December 18, 2008

Shish Ram

... Petitioner

Versus

State of Haryana and another.

... Respondents

CORAM: HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mr. Varinder Singh Rana, Advocate,
for the petitioner.

S.D. Anand, J. (Oral)

Crl. Misc. Nos. 58924 & 58925 of 2008 Allowed, as prayed for.

Crl. Misc. No. M-33449 of 2008 Notice of motion.

On the asking of the Court, Mr.S.S. Mor, Senior Deputy Advocate General, Haryana, accepts notice on behalf of the State.

The petitioner is under incarceration following his conviction in a case under the N.D.P.S. Act. The plea preferred by him for his premature release was declined by the Competent Authority as he is undergoing sentence in a case under the N.D.P.S. Act. The Competent Authority, in support of that view, drew sustenance from the provisions of Section 32-A of the N.D.P.S. Act.

It is common ground otherwise that the relevant controversy is pending consideration at the hands of the Apex Court.

In support of the contention that the embargo indicated by the provisions of Section 32-A of the N.D.P.S. Act, does not affect the jurisdictional powers of the Governor of the State to grant remission in exercise of powers under Section 161 of the Constitution of India, the learned counsel for the petitioner relies upon two judgments rendered by this Court in Ekka Ram vs. State of Punjab

in Criminal Writ Petition No. 839 of 2004 decided on 14.09.2005 and Baldev Singh vs. State of Punjab in Criminal Writ Petition No. 79 of 2005 decided on 1.3.2005. The judgment in Ekka Ram's case (supra) is under challenge before the Apex court in an SLP filed by the State of Punjab.

The learned State counsel does not controvert that proposition on fact. The pure and simple plea raised on behalf of the petitioner is that if the disposal of the SLP is delayed, even an ultimate favourable decision would be of no use because the petitioner - prisoner would have undergone the entire period of sentence by that time.

A similar eventuality was adjudicated upon by a Coordinate Bench of this Court (Satish Kumar Mittal, J.) in Criminal Misc. No. 51171-M of 2006 (Mahi Ram Vs. The Secretary & Financial Commissioner to Government of Haryana and others) and the following order was passed on 08.11.2006:

"It is ordered that in the meanwhile, the petitioner be temporarily released, if he fulfills the following terms and conditions:

i) Before releasing the petitioner, the concerned Superintendent of Jail will verify the period undergone by the convict and the remissions granted under Article 161 of the Constitution of India and that if after subtracting the period on parole, the convict has undergone the sentence awarded by the Court, he shall be released temporarily on bail to the satisfaction of the Chief Judicial Magistrate during the pendency of Special Leave Petition filed by State of Punjab in case Ekka Ram [SLP (Crl.) No. 2496 of 2006] arising from the final judgment and order dated 14.09.2005 passed in Criminal Writ Petition No. 839 of 2004. The convict concerned be granted the benefit of remission as per the circulars issued by Government of Punjab under Article 161, after his conviction.

ii) The petitioner will remain on bail during the pendency of S.L.P. No. 2496 of 2006 in the Apex Court. If as per the judgment of the Apex Court, benefit of remission under Article 161 is not granted, the convict will surrender back in jail for undergoing the unexpired period of sentence.

iii) At the time of release on bail, the petitioner will give an undertaking that he will not leave the country without prior permission of the Court and will keep peace and will continue informing the Chief Judicial Magistrate concerned his residential address from time to time."

This petition involving facts, which are exactly similar to those involved in Mahi Ram's case (supra), shall stand disposed of in terms of order Annexure P/3.

December 18, 2008
vkd

(S.D. Anand)
Judge