

STATE OF PUNJAB

v.

BABU SINGH

APRIL 16, 1991

[LALIT MOHAN SHARMA AND J.S. VERMA, JJ.]

*Code of Criminal Procedure, 1973: Section 433A—Life convict—Premature release of—Whether permissible—Mercy Petition pending—High Court releasing convict on bail—Validity of order.*

On the application for pre-mature release, made by the respondent, who was undergoing sentence of life imprisonment and had served a period of eleven and a half years the High Court directed that the respondent's mercy petition pending before the Governor, should be decided within three months. Since this was not done, the High Court directed his release on bail, observing that if his mercy petition was dismissed he would have to surrender. Against this decision the State filed an appeal before this Court.

Allowing the appeal, this Court,

HELD: The High Court has not taken into consideration the provisions of Section 433A of the Criminal Procedure Code, 1973 while passing the order for the respondent's release on bail. The judicial proceeding dealing with the conviction and sentence of the accused had been earlier concluded, and the order was passed while finally disposing of the writ petition alleging delay in disposal of the mercy petition. Thus, no case is now pending before the court. The order for the respondent's release on bail has not therefore, been passed as an interim measure pending the decision of a case before the Court. In such a situation the provisions of Section 433A are attracted. The words "such person shall not be released from prison" are wide in their application and cannot be restricted only to cases where the person has been released finally.

The judgment in question is set aside and the case remitted to the High Court for reconsideration of the writ petition confined to its limited scope.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 294 of 1991.

A From the Judgment and Order dated 10.4.1990 of the Punjab & Haryana High Court in CrI. Misc. No. 3635 of 1989.

R.S. Suri for the Appellant.

B Brijender Chahar and Ashok Mathur for the Respondent.

The following Order of the Court was delivered

We have heard the learned counsel for the parties. The delay in filing the special leave petition is condoned and leave is granted.

C 2. The respondent who was undergoing sentence of life imprisonment, had served a period of eleven and a half years when he made an application for pre-mature release. The Punjab and Haryana High Court by the impugned order issued a direction to release the respondent on bail, observing further that if his mercy petition, which was pending, is dismissed, he will have to surrender.

D 3. The High Court has not taken into consideration the provisions of Section 433A of the Criminal Procedure Code while passing the order. A week back we have allowed a criminal appeal against a judgment of the Punjab & Haryana High Court in another case directing pre-mature release on account of good conduct of the respondent in jail serving a life sentence although he had actually been in jail for a period of nine years only. We set aside the order as the provisions under Section 433A had not been taken into consideration, and remitted the matter to the High Court for reconsideration in accordance with the provisions of Jail Manual. The learned counsel for the respondent in the present appeal attempted to distinguish the case on the ground that here the respondent has been only enlarged on bail and has not been finally released. We do not think that Section 433A, which is quoted below, is inapplicable in the present case:

G "Restriction on powers of remission or commutation in certain cases—Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under Section 433 into one of imprisonment for life, *such person shall not be released from prison* unless he had

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served at least fourteen years of imprisonment.”

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(emphasis supplied)

The respondent in his writ petition before the High Court relied upon three instructions (Annexures P-1 to P-3) in support of his claim that he is entitled to pre-mature release. Earlier the High Court had directed the mercy petition, pending before the Governor, to be decided within a period of three months. This was not done and a reply was filed on behalf of the State explaining the circumstances under which the matter remained pending. In this background the impugned order was passed. The judicial proceeding dealing with the conviction and sentence of the accused had been earlier concluded, and the order of his release on bail was passed while finally disposing of the writ petition alleging delay in disposal of the mercy petition. In other words, no case is now pending before the Court, and it cannot be suggested that the order of the respondent's release on bail has been passed as an interim measure pending the decision of a case before the Court. In such a situation the provisions of Section 433A are attracted. The words in the Section quoted above and underlined by us are wide in their application and cannot be restricted as suggested by the learned counsel for the respondent. We, therefore, allow the appeal, set aside the impugned judgment and remit the case to the High Court for reconsideration of the writ petition confined to its limited scope in accordance with law. The respondent shall surrender without delay and only thereafter he shall be allowed to press his application before the High Court.

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N.P.V.

Appeal allowed.