

UNION TERRITORY OF CHANDIGARH

v.

CHARANJIT KAUR

FEBRUARY 15, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

*Constitution of India, 1950/Code of Criminal Procedure, 1973:*

*Art. 226/Sections 433, 482—Person convicted for charge of murder and sentenced to undergo imprisonment for life—Application filed for premature release—High Court directing release of the convict on the ground that State had not filed counter affidavit even after the case was adjourned on more than three occasions—Held : High Court had committed grave error of law in directing release of the convict on the lapse of the State in filing counter-affidavit.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 253 of 1996.

From the Judgment and order dated 1.6.95 of the Punjab & Haryana High Court in Crl. Misc. No. 5317/94 in Crl. Misc. No. 13555- B/93/in Crl. Misc. No. 13022-M of 1991.

Ms. Kamini Jaiswal for the Appellants.

Vishal Malik and M.S. Dhiya for the Respondent.

The following order of the Court was delivered :

Leave granted.

This appeal by special leave arises from the order of the High Court of Punjab and Haryana made on January 1, 1995 in C.M. No. 6872/95. The admitted facts are that the respondent was convicted for an offence of murder and sentenced to undergo imprisonment for life. Admittedly, she was convicted on June 2, 1984 for an offence committed on September 24, 1983. She has been in custody from September 19, 1983. An application has been filed in the High Court for her premature release. In the impugned order, the High Court has directed the release of the respondent

- A on the ground that the State had not filed the counter-affidavit, in spite of that fact that the case was adjourned on more than three occasions. The question is : whether the High Court has jurisdiction under Article 226 or under Section 482 of the Code of Criminal Procedure, 1973 (for short, the "Code") to release the prisoner.
- B Section 433 of the Code empowers the Government, in an appropriate case, without the consent of the person sentenced, to commute the sentence and to prematurely release the convict. Clause (b) thereof provides for a sentence of imprisonment for life, for imprisonment for a term not exceeding 14 years or fine. Indisputably, she did not even complete 14 years which is a minimum mandatory sentence required to be served under the Code. At best the Court, in an appropriate case, where the prisoner has served the mandatory minimum sentence, may only direct the appropriate Government to consider the commutation of the sentence and prematurely release a particular convict. They can do no further. The Government would consider such direction based upon the conduct of the prisoner and other relevant circumstances and act upon it.
- D

Thus considered, we are of the view that the High Court had committed grave error of law in directing release of the convict on the lapse on the part of the appellant-State in filing the counter-affidavit.

- E The appeal is accordingly allowed.

G.N.

Appeal allowed.