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*Before M.M. Kumar J*

PARAMJIT,—*Petitioner*

versus

STATE OF HARYANA & ANOTHERS,—*Respondents*

CrI. M. No. 25469/M of 2003

3rd November, 2003

*Code of Criminal Procedure, 1973—Instructions dated 12th April, 2002 issued by the Government of Haryana—Para 2(a) Clauses 2(c) & (iv)—Conviction of a juvenile u/s 302 IPC alongwith Section 6 of the TADA Act—Cl.2(c) of the instructions entitles a juvenile to premature release whose crime is not considered to be heinous as mentioned in Cls. (aa) & (a)—Murder with offence under TADA Act a heinous crime—Case of petitioner not covered by Cl. 2(C) of the instructions—Not entitled to the benefit of pre-mature release—Petition liable to be dismissed.*

*Held*, that the petitioner is not entitled to the benefit of clause 2(c) of the instructions dated 12th April, 2002 because those instructions specifically exclude the cases of heinous crime as mentioned in clauses (aa) and (a) which include the cases of Murder with offences under TADA Act. A perusal of the instructions shows that juvenile life convicts below the age of 18 years at the time of commission of offence could be granted benefits of instructions dated 12th April, 2002 if they have not been held guilty of heinous crime as mentioned in clauses (a) and (aa) of para 2 of the instructions. A perusal of clause 2(a) (iv) shows that when a juvenile who is convicted for a murder with an offence under the TADA Act is not entitled to premature release by extending the benefit of clause 2(c) of the instructions.

(Paras 7 & 9)

P.C. Chaudhary, Advocate, *for the petitioner.*

GPS Nagra, AAG, Haryana, *for the respondent.*

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**JUDGMENT**

**M.M. KUMAR, J.**

(1) The short question raised in this petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for brevity the Code) is as to whether a juvenile life convict is entitled to the benefit of premature release as contemplated by clause 2(c) of the instructions dated 12th April, 2002 (Annexure R. 1) issued by the Jails Department Haryana under Article 161 of the Constitution.

(2) Brief facts of the case are the convict petitioner, who is a juvenile has been convicted alongwith another in cases registered vide FIR No. 247 on 25th December, 1985 PS Sampla U/s 302 read with Section 34 IPC and FIR No. 249, dated 28th December, 1985 P.S. Sampla u/ss 25 and 27 of the Arms Act, 1959 read with Section 6 of the Terrorist and Disruptive Activities (Prevention) Act, 1985 (for brevity 'the TADA Act'). He was awarded the imprisonment for life under Section 302 IPC and rigorous imprisonment of two years under Sections 25 and 27 of the Arms Act, 1959 read with Section 6 of the TADA Act. The conviction of the petitioner as well as the sentence awarded to him have attained finality upto the Supreme Court. He had already undergone the following sentences till 17th May, 2003 :

	Years	Months	Days
(i) Actual sentence under gone including under trial period	09	06	17
		00	00
		06	17
(ii) Remissions earned			
Total under gone :	00	11	08
(iii) Parole period availed	13	07	09

Total sentence under gone excluding the period of parole availed.”

(3) In order to get the benefit of clause (c) of para 2(a) of the instructions dated 12th April, 2002, the petitioner filed a representation which was considered and rejected on 17th February, 2003 by the Financial Commissioner and Principal Secretary to Government Haryana, Jails Department vide Annexure P.7. The operative part of the order dated 17th February, 2003 reads as under :

“The premature release/case of this life convict No. 1009, Paramjit son of Kali Ram confined in District Jail, Rohtak was placed before the State Level Committee in compliance with Hon’ble Punjab and Haryana High Court orders dated 20th November, 2002, passed in Crl. Misc. No. 25995 M of 2002 for consideration.

The Committee observed as under :

This life convict has undergone following sentence as on 31st December, 2002 :

	Y	M	D
Actual sentence	09	02	00
(+) Remission	04	08	02
	13	10	02
(-) Parole	00	10	08
Total sentence	12	11	24”

This life convict alongwith another person had committed the murder of Ram Bhaj with knife like weapons on 25th December, 1985. The premature release case of this life convict falls under sub section (iv) of para 2(a) of the Govt. instructions dated 12th April, 2002 as this life convict has sentenced U/s TADA 27A Act alongwith 302 IPC. As per this para a life convict has to undergo 14 years actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 20 years. But this life convict has undergone only 9 years actual sentence and 13 years total sentence approximately. Therefore, the State

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Level Committee recommends that the premature release case of this life convict will be considered on completion of 14 years actual sentence including undertrial period and 20 years total sentence including remissions. The recommendations of the State Level Committee are accepted.”

(4) Feeling aggrieved by the order dated 20th November, 2002, the petitioner has approached this Court, Notice of the petition was issued and written statement has been filed by the respondents.

(5) Shri P.C. Chaudhary, learned counsel for the petitioner has argued that the petitioner has been involved in two separate FIRs registered on different dates i.e. FIR No. 247 dated 25th December, 1985 and FIR No. 249 dated 28th December, 1985. Learned counsel has pointed out that two years sentence awarded to him under the TADA Act has already been completed and he is simply undergoing sentence awarded under Section 302 IPC. According to the learned counsel, respondents have illegally refused the benefit of clause (c) of para 2 of the instructions dated 12th April, 2002 by clubbing both the cases and treating the same as one.

(6) Shri G.P. S. Nagra, learned State counsel has argued that the petitioner has undergone 9 years actual sentence and 13 years total sentence approximately. The State Level Committee had recommended that premature release case of the petitioner-convict would be reconsidered on completion of 14 years actual sentence by including the under-trial period and 20 years total sentence by including remissions. He has further pointed out that the case of the petitioner is fully covered by sub clause (iv) of para 2(a) of the instructions dated 12th April, 2002 as he has been convicted under Section 302 IPC alongwith Section 6 of the TADA Act. According to the learned State counsel, the occurrence is the one and the same although two FIRs were registered.

(7) After hearing the learned counsel and perusing the instructions dated 12th April, 2002, I find that the petitioner is not entitled to the benefit of clause 2(c) of the instructions dated 12th April, 2002 because those instructions specifically exclude the cases

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of heinous crime as mentioned in clauses (aa) and (a) which include the cases of Murder with offences under TADA Act. Clauses 2(a) and 2(c) of the instructions read as under :

“Juvenile life convicts below the age of 18 years at the time of commission of offence and whose cases are not covered under (aa) and (a) above and who have committed crimes which are not considered heinous as mentioned in clause (aa) and (a) and female life convicts. Juvenile life convicts who committed heinous crime as mentioned clause (aa) and (a) above, will be treated at par with adult life convicts and they will be considered as per provisions mentioned against (aa) and (a) above.”

Their cases may be considered after completion of 8 years actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 10 years.

(8) Clause 2(a)(iv) of the instruction dated 12th April, 2002 reads as under :

“Convicts who have been imprisoned for life having committed a heinous crime such as :

(i) to (iii)    xx        xx        xx

(iv) Murder with offence under TADA Act, 1987

Their cases may be considered after completion of 14 years actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 20 years.

(9) A perusal of the above reproduced clauses show that juvenile life convicts below the age of 18 years at the time of commission of offence could be granted benefits of instructions dated 12th April, 2002 if they have not been held guilty of heinous crime as mentioned in clauses (a) and (aa) of para 2 of the instructions.

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A perusal of clause 2(a) (iv) shows that when a juvenile who is convicted for a murder with an offence under the TADA Act is not entitled to premature release by extending the benefit of clause 2(c) of the instructions. The petitioner has made an attempt to take advantage of the fact that two separate FIRs have been registered against him to create an impression that both the FIRs are based on two separate occurrences. In fact it is not so. Both the FIRs have been registered with a gap of 3 days and it is evident that the recovery of knife, which is covered by TADA Act, was made during investigation after the registration of first FIR. The knife was the weapon of offence for committing the murder of one Ram Bhaj. Had the occurrence mentioned in the later FIR No. 249 dated 28th December, 1985 was distinct and different than the earlier FIR then the case of the petitioner would have been covered by clause 2(c) of the instructions dated 12th April, 2002 and the benefit of that clause could have been given. I do not find any ground to extend the benefit of the aforesaid clause to the petitioner. Therefore, the impugned order dated 20th November, 2002 passed by the Principal Secretary (Annexure P. 7) does not suffer from any legal infirmity and the same is upheld. The petition stands dismissed.

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**R.N.R.**

*Before V.M. Jain, J*

M/S WIMCO LTD.,—*Petitioner*

*versus*

HORAM & OTHERS,—*Respondents*

*C.R. No. 261 of 2003*

4th November, 2003

*Code of Civil Procedure, 1908—O.1 R1.10, O.22 R1.10—Petitioner purchasing property during pendency of a suit — Whether he can be impleaded as defendant under O.1 R1.10—Held, no—However, under O.22 R1.10 he is entitled to defend the suit on behalf of defendants/vendors.*

*Held*, that in view of the provisions of Order 22 Rule 10 CPC even if the petitioner could not be impleaded as a defendant under Order 1 Rule 10 CPC still the applicant-petitioner could be allowed