ITEM NO.4 COURT NO.2 SECTION II-B

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No.10687/2022

(Arising out of impugned final judgment and order dated 17-02-2022 in CRWP-11004 of 2021 passed by the High Court Of Punjab & Haryana at Chandigarh)

STATE OF HARYANA & ORS. Petitioner(s)

VERSUS

DAYA NAND Respondent(s)

(FOR ADMISSION and I.R. and IA No.160824/2022-CONDONATION OF DELAY IN FILING and IA No.160826/2022-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 10-11-2022 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE ABHAY S. OKA

For Petitioner(s) Mr. Deepak Thukral, Dy. A.G.
Dr. Monika Gusain, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

The respondent was convicted under Sections 302, 323, 324, 325 r/w Section 34 of the Indian Penal Code, 1860 and sentenced to life by the Additional Sessions Judge, Sirsa on 17.5.2002 and the appeal dismissed on 01.11.2011. The allegation against the accused was of murdering one person by firing at him with pistol, attacking him

with Kassi and giving hockey stick blows.

The respondent had undergone 12 years and 9 months of actual sentence and 14 years and 6 months with remission when he sought premature release. The concerned authorities kept the issue pending without taking a view one way or the other when the accused approached the High Court by filing a writ petition. In terms of the impugned order dated 17.2.2022, the request for remission has been allowed by the Court itself on the premise that it is covered by the policy.

By the impugned judgment dated 17.2.2022, the respondent-accused was released in February, 2022 itself but the State has preferred a special leave petition. It is the say of the learned counsel for the petitioner- State that the learned judge could have only directed the issue of remission to be examined by the concerned authorities and/ or given a time bound frame for taking the decision and ought not to have exercised that power himself.

We are in agreement with the submission of learned counsel for the petitioner in this behalf that it was not within the domain of judicial review for the learned judge to have himself exercised the power of remission. However, we would not like to exercise jurisdiction under Article 136 of the Constitution of India at this stage as the respondent stands enlarged 9 months back and no purpose would be served in sending him back to custody and for the State to once again examine the request for remission.

The result is that though we do not find the exercise of power in the impugned judgment in accordance with law, we would not like

to interfere under Article 136 of the Constitution of India insofar as now the respondent having been given the benefit of remission, it would not be appropriate to put him back in custody.

The special leave petition accordingly stands disposed of.

Pending application(s) also stand disposed of.

(RASHMI DHYANI PANT)
COURT MASTER

(POONAM VAID)
COURT MASTER