

**CRWP-4592-2024****-1-**

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

108

CRWP-4592-2024

Date of decision: 20.05.2024

Yoginder Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

PRESENT: Mr. Manoj Tanwar, Advocate for the petitioner.

NIDHI GUPTA, J.

1. Prayer in the present Criminal Writ Petition filed under Articles 226/227 of the Constitution of India, is for the issuance of a writ in the nature of *Mandamus* directing the respondents to release the petitioner prematurely forthwith on usual terms and conditions in view of the Govt. Premature Release Policy dated 12.04.2002 (Annexure P-3) as the petitioner has undergone more than 16 years and 07 months of his actual sentence and more than 24 years including remissions.

2. Learned counsel for the petitioner, *inter alia*, submits that the petitioner has already undergone actual custody of 16 years, 07 months and 11 days, out of the sentence of life imprisonment awarded to him under Section 302 IPC, therefore, it is prayed that the petitioner be granted the benefit of pre-mature release, in view of policy dated 12.04.2002 (Annexure P-3).



3. No other argument is raised on behalf of the petitioner.
4. I have heard learned counsel for the petitioner.
5. Perusal of the record shows that, vide judgment of conviction dated 10.08.2007 and order of sentence dated 13.08.2007 (Annexure P-1), passed by the learned Sessions Judge, Rewari, the petitioner was convicted under Section 302 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/-, in default thereof, to further undergo rigorous imprisonment for 03 months; in a case arising out of FIR No. 119 dated 01.06.2006 registered under Sections 304-B, 498-A, and 302 IPC at Police Station City Rewari, for committing murder of his wife and one-year-old daughter.
6. Being aggrieved, the petitioner had filed appeal before this Court bearing CRA-D-871-DB-2007, titled as 'Yoginder Singh vs. State of Haryana', which was dismissed by this Court vide judgment dated 04.07.2013 (Annexure P-2).
7. As per custody certificate dated 23.03.2024 (Annexure P-4), the petitioner has undergone actual custody of 16 years, 04 months and 16 days and with remissions the petitioner has undergone custody of 24 years, 01 month and 25 days, till 23.03.2024. Perusal of custody certificate further reveals that the petitioner has availed parole for 73 weeks and 05 days/1 year, 05 months and 06 months.
8. Perusal of the record further shows that previously also the petitioner had filed CRWP-86-2023 seeking the same relief as prayed for



in the present petition. The said previous petition bearing CRWP-86-2023 was dismissed as withdrawn vide order dated 09.01.2023 (Annexure P-5) passed by a co-ordinate Bench of this Court, which is reproduced as under:-

*“Realizing that the petitioner’s case is not covered by the Policy dated 12.04.2002, learned counsel for the petitioner wishes to withdraw this petition at this stage.
Dismissed as withdrawn.”*

9. Learned counsel for the petitioner has not been able to demonstrate to this Court as to how the case of the petitioner is now covered under the Government Policy dated 12.04.2002 (Annexure P-3).

10. Even otherwise, at this stage it would be apposite to refer to a Constitution Bench judgment of the Hon’ble Supreme Court in case titled as ***Union of India vs. V. Sriharan @ Murugan and others (SC) (Constitution Bench): Law Finder Doc Id # 720918*** wherein the following questions were formulated for the kind consideration of the Hon’ble Constitution Bench:

“8. Keeping the above factors in mind, precisely the nature of questions culminates as follows:

- (i) As to whether the imprisonment for life means till the end of convict's life with or without any scope for remission?
- (ii) Whether a special category of sentence instead of death for a term exceeding 14 years can be made by putting that category beyond grant of remission?
- (iii) Whether the power under sections 432 and 433 Code of Criminal Procedure by Appropriate Government would be available even after the Constitutional power under Articles 72 and 161 by the President and the Governor is exercised as well as the power exercised by this Court under Article 32?



- (iv) Whether State or the Central Government have the primacy under section 432(7) of Code of Criminal Procedure?
- (v) Whether there can be two Appropriate Governments under Section 432(7)?
- (vi) Whether power under Section 432(1) can be exercised *suo motu* without following the procedure prescribed under section 432(2)?
- (vii) Whether the expression "Consultation" stipulated in 435(1) really means "Concurrence"?

11. After extensive consideration of the Constitutional provisions as also the statutory provisions, the Hon'ble Constitution Bench laid down the following law: –

“53. Having noted the ratio of the above said decision in this question, we can also profitably refer to a subsequent Constitution Bench decision reported as **Maru Ram etc., v. Union of India and another, 1981 (1) SCR 1196. At pages 1222-1223**, this Court while endorsing the earlier ratio laid down in **Godse (supra)** held as under :

“A possible confusion creeps into this discussion by equating life imprisonment with 20 years imprisonment. Reliance is placed for this purpose on Section 55 I.P.C. and on definitions in various Remission Schemes. All that we need say, as clearly pointed out in Godse, is that these equivalents are meant for the limited objective of computation to help the State exercise its wide powers of total remissions. Even if the remissions earned have totaled upto 20 years, still the State Government may or may not release the prisoner and until such a release order remitting the remaining part of the life sentence is passed, the prisoners cannot claim his liberty. The reason is that life sentence is nothing less than life-long imprisonment. Moreover, the penalty then and now is the same - life term. And remission vests no right to release when the sentence is life imprisonment. No greater punishment is inflicted by Section 433A than the law annexed originally to the crime. Nor is any vested right to remission cancelled by compulsory 14 years jail life once we realise the truism that a life sentence is a sentence for a whole life. See **Sambha Ji Krishan Ji. v. State of Maharashtra, AIR 1974**



**Supreme Court 147 and State of Madhya Pradesh
v. Ratan Singh & Ors. [1976] Supp. SCR 552"**
(Emphasis added)

Again, at page 1248 it is held as under :

"We follow **Godse's case (supra)** to hold that imprisonment for life lasts until the last breath, and whatever the length of remissions earned, the prisoner can claim release only if the remaining sentence is remitted by Government".

54. In an earlier decision of this Court reported as **Sambha Ji Krishan Ji v. State of Maharashtra, AIR 1974 Supreme Court 147**, in paragraph 4 it is held as under :

"4. As regards the third contention, the legal position is that a person sentenced to transportation for life may be detained in prison for life. Accordingly, this Court cannot interfere on the mere ground that if the period of remission claimed by him is taken into account, he is entitled to be released. It is for the Government to decide whether he should be given any remissions and whether he should be released earlier."

55. Again in another judgment reported as **State of Madhya Pradesh v. Ratan Singh and others, (1976) 3 SCC 470**, it was held as under in paragraph 9 :

"9. From a review of the authorities and the statutory provisions of the Code of Criminal Procedure the following proposition emerge :

(i) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the Appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under section 401 of the Code of Criminal Procedure;"

(Emphasis added)

It will have to be stated that Section 401 referred to therein is the corresponding present Section 432.

XXX

61. Having noted the above referred to two Constitution Bench decisions in Godse (supra) and Maru Ram (supra) which were consistently followed in the subsequent decisions in Sambha Ji Krishan Ji (supra), Ratan Singh (supra), Ranjit Singh (supra), Ashok Kumar (supra) and Subash Chander



(supra). The first part of the first question can be conveniently answered to the effect that imprisonment for life in terms of Section 53 read with section 45 of the Penal Code only means imprisonment for rest of the life of the prisoner subject, however, to the right to claim remission, etc. as provided under Articles 72 and 161 of the Constitution to be exercisable by the President and the Governor of the State and also as provided under section 432 of the Code of Criminal Procedure.

XXX

78. Though we are not attempting to belittle the scope and ambit of executive action of the State in exercise of its power of statutory remission, when it comes to the question of equation with a judicial pronouncement, it must be held that such executive action should give due weight and respect to the latter in order to achieve the goals set in the Constitution. It is not to be said that such distinctive role to be played by the Executive of the State would be in the nature of a subordinate role to the judiciary. In this context, it can be said without any scope of controversy that when by way of a judicial decision, after a detailed analysis, having regard to the proportionality of the crime committed, it is decided that the offender deserves to be punished with the sentence of life imprisonment (i.e.) for the end of his life or for a specific period of 20 years, or 30 years or 40 years, such a conclusion should survive without any interruption. Therefore, in order to ensure that such punishment imposed, which is legally provided for in the Indian Penal Code read along with Criminal Procedure Code to operate without any interruption, the inherent power of the Court concerned should empower the Court in public interest as well as in the interest of the society at large to make it certain that such punishment imposed will operate as imposed by stating that no remission or other such liberal approach should not come into effect to nullify such imposition.

(Emphasis mine)

XXX

214. Section 53 of the I.P.C. envisages different kinds of punishments while Section 45 of the I.P.C. defines the word 'life' as the life of a human being unless the contrary appears from the context. The life of a human being is till he is alive that is to say till his last breath, which by very nature is one of indefinite duration. In the light of the law laid down in



Godse and Maru Ram, which law has consistently been followed the sentence of life imprisonment as contemplated under Section 53 read with Section 45 of the I.P.C. means imprisonment for rest of the life or the remainder of life of the convict. The terminal point of the sentence is the last breath of the convict and unless the appropriate Government commutes the punishment or remits the sentence such terminal point would not change at all. The life imprisonment thus means imprisonment for rest of the life of the prisoner.

215. In paras 27 and 38 of the decision in **State of Haryana v. Mahender Singh and others, 2007(4) RCR (Criminal) 909 : 2007(13) SCC 606**, this Court observed:-

"27. It is true that no convict has a fundamental right of remission or shortening of sentences. It is also true that the State in exercise of its executive power of remission must consider each individual case keeping in view the relevant factors. The power of the State to issue general instructions, so that no discrimination is made, is also permissible in law.

38. A right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder. Although no convict can be said to have any constitutional right for obtaining remission in his sentence, he in view of the policy decision itself must be held to have a right to be considered therefore. Whether by reason of a statutory rule or otherwise if a policy decision has been laid down, the persons who come within the purview thereof are entitled to be treated equally. (**State of Mysore v. H. Srinivasmurthy**)"

The convict undergoing the life imprisonment can always apply to the concerned authority for obtaining remission either under Articles 72 or 161 of the Constitution or under Section 432 Cr.P.C. and the authority would be obliged to consider the same reasonably. This was settled in the case of Godse which view has since then been followed consistently in **State of Haryana v. Mahender Singh** (supra), **State of Haryana v. Jagdish** (supra), **Sangeet v. State of Haryana** (supra) and **Laxman Naskar v. Union of India and others, 2000(1) RCR (Criminal) 839 : (2000) 2 SCC 595**. The right to apply and invoke the powers under these provisions does not mean that



he can claim such benefit as a matter of right based on any arithmetical calculation as ruled in Godse. All that he can claim is a right that his case be considered. The decision whether remissions be granted or not is entirely left to the discretion of the concerned authorities, which discretion ought to be exercised in a manner known to law. The convict only has right to apply to competent authority and have his case considered in a fair and reasonable manner.”
(Emphasis mine)

12. As such, from the unambiguous position in law as unequivocally enunciated here in above, it is clear that the argument made on behalf of the petitioner that the petitioner is entitled to remission as he has already undergone the ‘required’ sentence as per Policy dated 12.04.2002 (Annexure P-3), is entirely misplaced and untenable.

13. Accordingly, the present petition stands **dismissed**.

14. Pending application(s) if any also stand(s) disposed of.

20.05.2024
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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No