

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Writ Petition No. 1605 of 2014

Date of Decision: May 01, 2015

Brahma NandPetitioner

Versus

State of Haryana and othersRespondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.PR Yadav, Advocate for the petitioner.

Mr.satish Saini, Deputy Advocate General, Haryana.

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TEJINDER SINGH DHINDSA, J.

The petitioner is undergoing life imprisonment in case FIR No.436 dated 2.7.1995, under Section 302 of the Indian Penal Code, Police Station Sadar Gurgaon, District Gurgaon having been convicted by the Court of learned Additional Sessions Judge, Gurgaon on 20.1.1997. The appeal preferred by the petitioner against the judgment of conviction i.e. Criminal Appeal No.197-DB of 1997 stands dismissed by this Court vide order dated 3.1.2006.

2. In the instant Criminal Writ Petition filed under Articles 226/227 of the Constitution of India, the petitioner is assailing the order dated 16.6.2014 passed by the Additional Chief Secretary to Government Haryana, Jails Department, Annexure P3, in terms of which his plea for pre-mature release has not been accepted.

3. A perusal of the impugned order dated 16.6.2014 at

Annexure P3 as also the reply filed on behalf of the State would show that there is no dispute that the Policy of premature release dated 4.2.1993 is applicable to the petitioner. The impugned order itself recites that the case of premature release of the petitioner falls under para 2 (b) of the Policy dated 4.2.1993.

4. The pre-mature Policy dated 4.2.1993 stands placed on record and appended as Annexure P2 along with the instant petition. As per para 2(b), the pre-mature release of a life convict is to be considered after completion of ten years of actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 14 years.

5. The admitted position of fact as per impugned order is that the petitioner has completed 11 years and 4 months actual sentence including undertrial period and 14 years of total sentence including remissions after deducting parole period.

6. Stand of the State Government is that the case of premature release of the petitioner was placed before the State Level Committee on 15.5.2014 and upon consideration, it was found that even though the petitioner has completed his requisite sentence in the light of premature release Policy dated 4.2.1993, yet keeping in view the jail offence committed by him i.e. having remained absent from parole for 4 years, 1 month and 13 days on two occasions, the State Level Committee did not recommend the premature release and rather recommended to defer the same for a period of one year and six months. Such recommendations of the State Level committee have been accepted while passing the

impugned order dated 16.6.2014.

7. Learned counsel for the parties have been heard.

8. The issue as to whether jail offence is a ground to deny premature release to a life convict is no longer res-integra. This Court has considered precisely such issue in **Raj Kumar v. State of Punjab** (Criminal Misc.No.55534-M of 2006), decided on 12.12.2006 and held as follows:

*“The counsel for the petitioner has relied on a judgment of this Court in the case of **Subhash v. State of Haryana, 1994 (3) Recent CR 489** to urge that commission of jail offences would be no legal or valid ground to deny the concession of premature release if it has become due, specially so when the convict had already been punished for the jail offences. While so holding, this Court in **Subhash's** case (supra) has relied on the case of **Lila Singh v. State of Punjab, 1988(1) RCR 28**. It was held that jail offences committed by the convict for which he has already been punished, cannot be taken into consideration while deciding the case for premature release. Admittedly, the case of the petitioner for consideration on his premature release has been declined on the ground that the same can be considered only if the convict has maintained a good conduct in jail. As per the reply, good conduct means that the person has not committed any jail offence for a period of five years prior to the date of his eligibility for consideration of release. It is*

accordingly pleaded that the benefit of premature release cannot be granted to the petitioner as his case is not covered by the instructions, as aforementioned. The stand of the State cannot be appreciated being contrary to the law laid down by this Court. The case of the petitioner is fully covered by the judgment of this Court, referred to above. It has been clearly held by this Court that commission of a jail offence is no legal ground to deny the premature release, especially when the person has been punished for such a misconduct. Accordingly, the action of the respondents in not considering the case of the petitioner for premature release cannot be sustained. The petitioner is entitled to a consideration of his case for premature release in terms of the instructions, Annexure P1."

9. Even otherwise, it has gone uncontroverted that with regard to having remained absent from parole, FIR No.456/98 under Sections 8/9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, Police Station City Gurgaon was registered against the petitioner in which he was convicted and sentenced for one year rigorous imprisonment by the Court of Judicial Magistrate Ist Class, Gurgaon vide order dated 18.5.2007 and in appeal, the sentence was ordered to be undergone by the learned Sessions Judge, Gurgaon vide order dated 29.11.2010. As regards having remained absent from furlough from 29.3.2011 to 7.4.2011 i.e. eight days, a formal warning was awarded to the

petitioner by the Superintendent of Prisons, District Prisons, Gurgaon on 9.4.2011.

10. In view of the circumstances noticed hereinabove and by applying the dictum laid down in **Raj Kumar's** case (supra), this Court is of the considered view that the impugned order dated 16.6.2014, Annexure P3, can not sustain. The same is, accordingly, set aside. State Authorities are directed to consider the case of the petitioner for his premature release strictly in terms of the premature Policy dated 4.2.1993 and without taking into consideration the jail offence committed by him, and pass orders afresh within a period of eight weeks from the receipt of a certified copy of this order.

11. Petition allowed in the aforesaid terms.

May 01, 2015
SRM

(**TEJINDER SINGH DHINDSA**)
JUDGE

Note: Whether to be referred to Reporter? (Yes/No)