

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No.M-11389 of 2016 (O&M)
Date of decision : 11.08.2016**

Karambir

.....Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. K.L. Suneja, Advocate
for the petitioner.

Mr. Sharad Kr. Yadav, DAG, Haryana.

ANITA CHAUDHRY, J.

This petition has been filed under Section 482 Cr.P.C. read with Article 21 of the Constitution of India for directions to the respondents to add the period of remission and the period of parole to the actual sentence undergone by the petitioner.

The petitioner along with others were convicted in FIR No.124 dated 03.05.1994, registered under Sections 304-B/201/498-A IPC and was sentenced to various sentences including 10 years imprisonment for commission of offence under Section 304-B IPC, vide judgment dated 08.04.1996 by the Sessions Judge, Rohtak. An appeal was preferred by the convicts. The appeal was partly accepted. The petitioner claims that he has undergone 10 years, 05 months and 12 days of custody at the time of filing of the petition which is more than the punishment that

was awarded. He claims that the fine had also been deposited on 01.02.2016 and therefore, he should be released. According to the petitioner in the custody certificate issued by the Deputy Superintendent Jail, Jhajjar a remission of 2 years and 6 months had been added against the period of 3 years, 02 months and 10 days and the period of parole has not been added.

In the reply submitted by the State it was pleaded that the petitioner had not completed his sentence and the period undergone as on 24.05.2016 was 9 years, 5 months and 6 days. It was pleaded that as per para no. 645 of the Punjab Jail Manual, the total remission awarded to a prisoner can not exceed $\frac{1}{4}$ th part of his sentence as per extract Annexure R1. It was also pleaded that the parole period cannot be counted towards the total period of sentence as per the provisions contained in Sub Section 3(iii) of the Haryana Goods conduct Prisoners (Temporary Release) Act, 1988 (here-in-after referred to as the Act only).

The counsel for the petitioner relies upon Maru Ram Vs. Union of India 1980 AIR 2147 (SC), State of Haryana Vs. Naurata Singh 2000(2) RCR (Criminal) 294 and Sunil Fulchand Shah Vs. Union of India and others 2000(1) CLR 945 and has urged that the government has the power to grant remission of not more than $\frac{1}{3}$ rd of the total sentence and that power should have been exercised. It was urged that in Sunil Vs. Phool Chand's case (supra), the Apex Court had held that the parole period has to be counted towards the total period of detention.

In State of Haryana Vs. Naurata Singh, decided on 10.03.2000 in CRA No.933 of 1998 the issue raised was whether the

convict was entitled to remission of the period during which he was on bail under the orders of the Court. The Single Judge Bench of this Court had allowed the claim holding that the period accused was on bail should be counted for the purposes of remission. In the appeal preferred by the State of Haryana the Apex Court observed as under:-

“The claim of the respondent that he is entitled to deduct the period during which he was on bail was sought to be supported by two judgments rendered by the Punjab and Haryana High Court earlier. They are: Man Mohan Sahani vs. State of Haryana {1987 (2) Recent Criminal Reports 292} and Amrik Singh vs. State of Haryana {1992 (2) Recent Criminal Reports 138}. In Man Mohan Sahanis case the prisoner was acquitted by the trial court on 26.4.1977, but the High Court reversed the judgment and convicted him and sentenced him to imprisonment for life, to which sentence he surrendered on 28.1.1980. So he claimed the benefit of remission in respect of the said period. A learned Single Judge of the High Court following the ratio laid down in Maru Rams case (supra) held that petitioners conviction must relate back to the date of the trial courts verdict and substituted so. There is no dispute regarding that part of the decision. But learned Judge had abruptly concluded thereafter thus:

On a parity of reasoning, in the present case too, the conviction of the petitioner by the High Court must relate back to the date of the trial courts verdict from which it would, therefore, follow that the petitioner, for purposes of the remission claimed, must be deemed to have been convicted and out on bail at the time of the remissions and thus entitled to the benefit thereof. The petitioner is

accordingly entitled to the benefit of the remissions claimed and the authorities concerned are consequently directed to consider his case for release from jail after allowing him such benefit.

In Amrik Singh vs. State of Haryana (supra), another Single Judge of the same High Court, following the above quoted passage from Man Mohan Sahani observed thus:

There is no doubt left in my mind that the judgment in Man Mohan Sahnis case (supra) is fully applicable to the facts and circumstances of the case, on hand, rather this case stands on a better footing as the petitioner was on bail by the order of the Court. He is entitled to earn the remissions earned by other detenus during the period he was on bail.

It is pertinent to point out that in the judgment impugned before us learned Single Judge has merely followed the above two decisions as could be noticed from a passage of the impugned judgment which is extracted below:

In Amrik Singhs case, this Court held that the accused is entitled to the remission earned during the period when he was on bail. Therefore, it is clear that though the petitioner herein was first convicted under Section 302 read with Section 34 of the Indian Penal Code, on 23.4.1980 by the High Court, which was ultimately confirmed by the Supreme Court on 27.7.94, for all intends and purposes, the petitioner must be taken to have been convicted on 5.1.1978, which is the date of the verdict of the trial court. It is also clear that he is entitled to all the benefits of the remission even for the period during which he was on bail.

We have no doubt that the High Court of Punjab and Haryana has wrongly decided Man Mohan Sahanis case and that erroneous view was wrongly followed in Amrik Singhs case so far as the present question is concerned (relating to entitlement of remission to include the period

during which the convicted person was on bail). We need only to point out that in Man Mohan Sahanis case the High Court did not advert to any reason, whatsoever, for the period during which the person was not in jail to be counted towards the period of remission of the punishment under the sentence.

The instructions issued by the Government of Haryana under which respondent claimed remission cannot be interpreted as to enable him to count the period during which he was on bail towards remission. The expression parole or furlough in the aforesaid instructions cannot, for obvious reasons be stretched to the period during which the person was enlarged on bail, during the pendency of the trial or appeal or revision. It must be remembered that no sentence would be passed on the accused during the time he remains under trial and hence there is no question of any remission to be granted to him during that stage, except the period during which he was under detention as provided in Section 428 of the Code. If he was released on bail during the pendency of appeal or revision it is on account of the fact that the court suspended the sentence passed on him. When the sentence stands suspended he would be released on bail on his own entitlement. But the case of parole or furlough is different from the above.”

Avtar Singh, a convict had filed a petition in this High Court for directions to the State to include the period of parole availed by him. That application was dismissed by this Court. Aggrieved with the order, he filed Crl. Appeal No.271 of 2002, which was decided on 19.02.2002 by the Apex Court. He had also filed a writ petition challenging the vires of Section 3(iii) of the Act on the ground that the sub Section was arbitrary,

illegal, ultra vires and unconstitutional. When the matter came up before the Supreme Court, the question was referred to the larger Bench which reads as under:-

"In the writ petition Section 3(iii) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 is challenged on the ground that it is violative of Article 14 and Article 21. In State of Haryana vs. Mohinder Singh 2000 (3) SCC-394 and the Constitution Bench in Sunil Fulchand Shah vs. Union of India and Ors. 2000 (3) SCC 409, this Court held that parole and furlough period can also be counted as the period of sentence of imprisonment. But in those decisions the question of validity of the impugned sub-section of the Act mentioned above has not been considered. When the constitutional validity of the said sub-section is challenged and the focus is made on Article 21, we are of the opinion that this must be heard by a larger bench. Registry will place this matter for orders of the Hon'ble the Chief Justice of India."

A Three Judge Bench in 2002 considered the appeal and the writ petition and examined the provisions contained in Act. It was submitted before the Apex Court that since the Constitution Bench in Sunil Fulchand Shah's case had held that the period of parole can be counted as a period of sentence as imprisonment, therefore, Section 3(iii) of the Act was unconstitutional and violative of Article 21 of the Constitution and that the provisions were discriminatory.

The larger Bench rejected the submissions made by the appellant Avtar Singh and held as under:-

“The second contention of the learned counsel for the appellant has also to be rejected in view of the decision of this Court in Sunil Fulchand Shah (supra). The Constitution Bench has clearly held that though ordinarily the period of temporary release of a prisoner on parole needs to be counted towards the total period of detention but this condition can be curtailed by legislative act, rules, instructions or terms of grant of parole.

We also do not find force in the contention of the learned counsel for the appellant that sub-section (3) of Section 3 of the Act is hit by Article 21 of the Constitution. By a valid legislative act the period of temporary release on parole has been denied while counting the actual sentence undergone by the prisoner. It cannot be said that such right of a prisoner has been taken away without due process of law. Consequently, these contentions of the learned counsel for the appellant are rejected.

We, therefore, find no merit in the appeal as well as in the writ petition and consequently both the appeal and the writ petition are dismissed.”

The period of parole can only be counted towards the period of detention unless the Rules or Instructions prescribe otherwise. In the Haryana Act, the legislature had specifically provided that the period of temporary release on parole has to be denied while counting the actual sentence. The provisions of Section 3(iii) of the Act have been upheld. Therefore, the submission made on behalf of the appellant has to be rejected.

The second submission that the remission of 1/3rd should be added is also to be rejected as the petitioner has failed to show that his

case was exceptional or suitable or that any order in that regard had been passed by the Inspector General of Prisons as provided in para no. 645 of the Punjab Jail Manual.

I find no merit in the petition. Consequently it is dismissed.

11.08.2016
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : Yes