

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

**Crl. Writ Petition No. 1371 of 2014 (O&M)
Date of decision : 03.06.2016**

Anil

... Petitioner

versus

State of Haryana & Ors.

... Respondents

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

**Argued by: Mr. S.K. Goyat, Advocate
for petitioner.**

Ms. Vibha Dhiman, AAG Haryana.

--

ANITA CHAUDHRY, J.

Through the instant petition, the petitioner is seeking his premature release from the jail in the light of Para 2(b) of the Pre-mature Release Policy 12.04.2002. The petitioner is also questioning the legality of rejection order dated 28.02.2014, Annexure P-3, whereby the relief of premature release has been declined.

The facts, as culled out from the petition, are being noticed first. Petitioner Anil and others were tried in FIR No. 264 dated 24.10.2001, registered under Sections 302, 376(g), 201 and 120-B, Police Station Sadar, Hansi. On conclusion of the trial, he was held guilty under Section 376(1)(g) IPC and was awarded life imprisonment with a fine of Rs.25000/- vide judgment and order dated 02.12.2003 and 06.12.2003 respectively. The actual period undergone by him is stated to be more than 14 years. The

grouse of the petitioner is that despite his undergoing the requisite period as provided under Clause (b) of Para No.2 of the policy dated 12.04.2002, the State Government erred in declining the relief to him by misinterpreting the policy.

Upon notice, reply has been filed by the State of Haryana. It was admitted that the case of the petitioner was covered by policy dated 12.04.2002. The stand taken was that since the petitioner had not completed 14 years of actual sentence and 20 years' sentence with remissions as prescribed in Clause 2(a)(xii) and (xiv) of the Policy, the State Level Committee had rejected the prayer of the petitioner for pre-mature release.

I have considered the submissions made by learned counsel for the petitioners as well as of the learned State counsel.

It is apparent from the reply filed by the State that there is no dispute that the case of the petitioner was considered as per the policy instructions dated 12.04.2002 which prevailed at the time when he was sentenced by the trial Court. However, the main objection of the State was that since he had not undergone the period of custody as stipulated under the Policy, his request was declined.

The State Government vide Notification dated 12.04.2002 revised the policy regarding pre-mature release of life convicts, which admittedly, was prevalent at that time. The relevant portion thereof reads as under:-

(aa)	<i>Convicts whose death sentence has been commuted to life imprisonment and convicts who have been imprisoned for life having committed a heinous crime such as:-</i>	<i>Their case may be considered after completion of 20 years actual sentence and 25 years total sentence with remissions</i>
(i)	Murder after rape repeated/ chained rape/ unnatural offences	
(ii)	Murder with intention for the ransom	
(iii)	Murder of more than two persons	
(iv)	Persons convicted for second time for murder	
(v)	Sedition with murder	
(a)	Convicts who have been imprisoned for life having committed a heinous crime such as:-	Their cases may be considered after completion of 14 years actual sentence including under trial period provided of such sentence including remissions is not less than 20 years
(i)	Murder with wrongful confinement for extortion/ robbery	
(ii)	Murder while undergoing life sentence	
(iii)	Murder with dacoity	
(iv)	Murder with offence under TADA Act, 1987	
(v)	Murder with Untouchability (offences) Act, 1955	
(vi)	Murder in connection with dowry	
(vii)	Murder of a child under the age of 14 years	
(viii)	Murder of a woman	
(ix)	Murder after abduction or kidnapping	
(x)	Murder exhibiting brutality such as cutting the body into pieces or burning/ dragging the body as evident from judgment of the Court	
(xi)	Persistent bad conduct in the prison	
(xii)	Convicts who have been imprisoned for life under Section 120-B IPC	
(xiii)	Convicts who have been imprisoned for life under Section 120-B IPC	
(xiv)	Any other crime that the State Level Committee considers to be 'heinous' for reasons to be recorded in writing	
(b)	Adult life convicts who have been imprisoned for life but whose case are not covered under (aa) and (a) above and who have committed crime which are not considered heinous as mentioned in clause (aa) and (a) above	Their cases may be considered after completion of 10 year actual sentence including under-trial period provided that the total period of such sentence including remissions is not less than 14 years.

The petitioner has claimed that his case falls within Clause 2 (b) of the Policy, which prescribed completion of 10 years' sentence and not less than 14 years with remissions, while according to the State, his case is covered under Clause 2(a)(xii) and (xiv) of the Policy and his case for premature release would be considered on completion of 14 years actual sentence and not less than 20 years with remissions.

A perusal of relevant clauses, reproduced above, would show that a distinction had been made between heinous and non-heinous offences and against both the clauses minimum actual sentence was prescribed which a convict was required to undergo to make him eligible for consideration to premature release. The petitioner was sentenced to life imprisonment only under Section 376(1)(g) IPC for having committed gang rape of the girl while some of his co-accused were convicted for murder of the girl. The offence of rape is not specifically referred in the instructions, as a heinous crime as provided under Clauses 2(aa) and (a). An exception was provided under Clause (xiv) that if a convict was sentenced for any other crime, not expressly mentioned in Clauses 2(aa) and (a), which was considered to be 'heinous' by the State Level Committee, the convict was required to complete 14 years of actual sentence and not less than 20 years with remissions. But for that, the State Level Committee had to record reasons in writing. The same principles applies to the case where the premature release of a convict was not safe for the society, as prescribed under Clause (xii), referred to

above.

The relevant portion of impugned order reads as under:-

"2. And whereas, the date of the conviction of the petitioner is 06.12.2003. So the policy of Premature Release dated 12.04.2002 is applicable in this case. The Premature Release case of this life convict is to be considered after completion of 14 years of actual sentence including undertrial period, provided that the total period of such sentence including remission is not less than 20 years. This life convict has undergone 12 years 23 days actual sentence including under trial period and 14 years total sentence including remissions and after deducting parole period.

3. And whereas, the case of premature release on this convict was placed before the State Level Committee on 20.01.2014. The State Level Committee after considering the matter has not recommended the premature release case of this life convict as he has neither completed 14 years actual sentence nor 20 years total sentence as per the policy dated 12.04.2002.

4. And whereas, the case of the life convict has been considered and agreeing with the recommendations of the State Level Committee, the life convict Anil s/o Baldeva has not been found eligible for premature release at the stage."

It is apparent from the impugned order that the State

Level Committee had not recommended the case of the petitioner for premature release only because he had not completed 14 years actual sentence and 20 years with remissions as provided under Clause 2(a) of the Policy. No reasons whatsoever, had been assigned in the impugned order that the State Level Committee had observed that the premature release of the petitioner would be a threat to the society as prescribed under Clause 2(a)(xii). It is not shown that the Committee had assigned special reasons as required under Clause 2(a)(xiv) to conclude that his case has to be considered after 14 years actual sentence and 20 years with remission. Even the State has not disputed in their reply that there was any adverse report against the petitioner as an inmate. All the vital aspects were not considered while rejecting the claim of the petitioner for premature release. From a bare reading of the clauses reproduced above, it is suffice to say that the case of the petitioner ought to have been considered under Clause 2(b) of the Policy, whereunder a convict is required to undergo 10 years' actual sentence and not less than 14 years with remissions.

The custody certificate dated 11.05.2016 shows the convict to have undergone more than 14 years and 06 months of actual sentence and 17 years and 09 months with remissions.

No convict has a fundamental right of remission of shortening of sentence, but the order of the State Government while rejecting the case of pre-mature release must have reflection about the subjective satisfaction of the competent

authority that the premature release of a convict would be harmful for the society or that there are chances of reoccurrence of offence.

In view of the above, the impugned order is set aside. Directions are issued to the respondents to re-consider the case of the petitioner for pre-mature release by passing a speaking order within four months of receipt of a certified copy of this order. If the case of the petitioner for premature release is not decided within the stipulated time, the petitioner shall be released on parole on his furnishing personal bond and surety bond to the satisfaction of the District Magistrate concerned. The petitioner shall give an undertaking that he will not leave the country without prior permission of the Court and will keep peace and shall not indulge in any criminal activity during parole. On receipt of order from the State Government, Superintendent, Central Jail, Hisar, shall inform the petitioner accordingly.

The petition is allowed on the aforesaid terms.

June 03,2016
Jiten

(ANITA CHAUDHRY)
JUDGE