

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

**Criminal Writ Petition No.619 of 2014
Date of decision: 10.02.2016**

Dharambir

..Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes**
- 2. To be referred to reporters or not? Yes**
- 3. Whether the judgment should be reported in the Digest? Yes**

Present: Mr. P.R. Yadav, Advocate
for the petitioner.

Ms. Trishanjali Sharma, AAG, Haryana
for the respondents – State.

Daya Chaudhary, J.

This writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Habeas Corpus to release the petitioner by giving benefit of policy dated 12.04.2002 framed by the State Government as the petitioner has undergone the actual period of sentence and his case is covered by the policy and the order of declining premature release dated 05.03.2014, whereby the claim of the petitioner has been rejected, which is contrary to the Policy and guidelines.

The petitioner faced trial in case FIR No.119 dated 19.09.2001 registered under Sections 376(2)(g)/323 read with Section

34 of Indian Penal Code at Police Station Kosli, District Rewari. He was convicted vide judgment dated 24.09.2004 and was sentenced to undergo RI for a period of 12 years with fine of ₹2000/- vide judgment dated 25.09.2004

Aggrieved by the aforesaid judgment of conviction and order of sentence passed by the trial Court, the petitioner preferred an appeal before this Court and this Court vide order dated 23.11.2005 set-aside the order of sentence and remanded the case back to the trial Court for passing order of sentence afresh.

Thereafter, vide judgment dated 01.04.2006, the petitioner was sentenced to undergo imprisonment for life with fine of ₹2000/-. The petitioner again preferred an appeal to challenge the judgment of conviction and order of sentence, which was dismissed on 25.03.2008.

Learned counsel for the petitioner submits that as per policy of the State Government dated 12.04.2002, the case of the petitioner for premature release was forwarded by the Superintendent, District Jail, Narnaul with his recommendation that he had completed actual sentence of ten years and in total 14 years of sentence including remissions. The case was put up before the State Level Committee but the same was rejected stating therein that his case was not covered under the Policy and it would be considered on completion of 14 years of actual sentence and 20 years of sentence

including remissions. Learned counsel further submits that as per ratio of judgment of Hon'ble the Supreme Court in **State of Haryana and others vs. Jagdish, 2010(2) RCR (Criminal) 464**, the case of a prisoner is to be considered as per policy, which was in force at the time of conviction and in case, a liberal policy prevails on the date of consideration, the benefit of the same is to be given to the life convict. Learned counsel also submits that no reason whatsoever has been given while rejecting the case of the petitioner. Simply it has been mentioned that the case of the petitioner falls under para 2(a)(xii) and 2(a)(xiv) of policy dated 12.04.2002. Learned counsel also submits that offence of gang rape does not find place in the category of heinous crimes mentioned in the policy for the purpose of premature release. Learned counsel also submits that while declining the claim of the petitioner, nothing has been mentioned as to how the petitioner will cause danger to public safety as the petitioner has neither misused concession of parole nor any such incident was ever reported. Learned counsel also submits that one similarly situated life convict, namely, Vikram Singh was convicted on 23.02.2001 and sentenced to imprisonment for life. It was a case of murder with rape but he was released prematurely by applying the same policy vide order dated 22.09.2010.

Learned State counsel on the basis of reply submits that the petitioner along with three other persons had committed gang

rape upon the minor girl, who was 17 years of age, which is heinous crime. It was considered by the State Level Committee and the case of the petitioner for premature release was declined as it fell under Para 2(a)(xii) and 2(a)(xiv).

Heard arguments advanced by learned counsel for the petitioner as well as learned State counsel and have also perused the policy dated 12.04.2002 framed by the State Government.

The facts of conviction and sentence of the petitioner are not disputed. It is also not disputed that the case was to be considered as per the policy, which was prevalent at the time of conviction of the petitioner i.e., the policy dated 12.04.2002.

The only contention, which has been raised by learned counsel for the petitioner is that the petitioner has completed 14 years of actual sentence and, therefore, he is entitled for premature release. A perusal of impugned order of rejection shows that nothing has been mentioned as to why the claim of the petitioner has been rejected. Simply it has been mentioned that the case for premature release of the petitioner was placed before the State Level Committee on 29.01.2014 and the same was not recommended as the petitioner had not completed 14 years of actual sentence and 20 years including remissions as per policy dated 12.04.2002. Although learned State counsel has shown the recommendation of the Committee from the original record whereby the claim of the petitioner has been rejected

by considering the offence as heinous crime but the same has not been conveyed to the petitioner.

It is also the argument of learned counsel for the petitioner that in case, said reasoning is stated to be conveyed to the petitioner then also, it was not as per policy dated 12.04.2002 as gang rape does not even fall under the category of heinous crimes.

On perusal of impugned order, it is apparent that no reason whatsoever has been conveyed whereas the petitioner was entitled to know the reason for rejection of his case. Further as per the contention of learned State counsel, a discretion has been conferred on the Committee considering the premature release cases in view of the nature and gravity of the offence but learned State counsel has not been able to show any guidelines adopted by the State Level Committee or the factors, which are taken into consideration at the time of considering the premature release cases that the certain offences, which have not been mentioned in the category of heinous crimes can also be considered as heinous crime.

No doubt rape is not merely a physical assault but it is an assault on the whole personality of the victim. It not only destroys the physical frame of the body of the victim but also degrades helpless females in the society and public at large. Rape destroys entire psychology of a victim and pushes her into deep emotional crisis. A young girl, who is about 17 years of age, has many dreams for her

future but because of action of the rapist, all her dreams are shattered. Not only her matrimonial prospects are diminished but she feels great humiliation in public also.

The State Government has power to make classification but whenever the policy decision is taken by the State Government, it is expected that the persons who are facing the criminal proceedings must be treated equally in terms thereof.

Undisputedly, no convict has the fundamental right of remission or shortening of sentences but the State in exercise of its executive power of remission must consider each case by keeping in view the relevant factors. 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, is held to be a legal one. If a policy decision is taken and certain guidelines are laid down then the case of every prisoner should be considered within the purview of that policy by giving equal treatment. No doubt exercise of executive power is a matter of discretion but still certain standards are required to be followed. Such discretion has to be exercised on public considerations alone.

The manner of commission of crime is a relevant consideration and that is to be scrutinized while considering the case of premature release. The State Government and the Committee is to take into consideration not only the conduct of the convict but his

criminal antecedents as well. The effect of such release on the victims or their family members and other similar factors must be considered as relevant. No doubt, the order of State Government cannot be inferred with only because another view is possible but the facts are required to be examined in every case individually. If the State Government has framed any rule or made a scheme for early release of such convicts then those rules or schemes have to be treated as guidelines for exercising its power under Article 161 of the Constitution of India.

Heinousness of crime is relevant factor to grant pardon or release prematurely. Heinousness or gravity of offence can be a ground to discriminate the case of one accused from that of another for grant of premature release.

In view of facts as mentioned above, the convict has a right to know as to how his claim has been rejected and how his case is not covered by the policy. He has a right to know as to what factors have been considered while declining his request for premature release when his case does not fall under the category of heinous crimes.

Accordingly, impugned order dated 05.03.2014 is non-speaking one as it does not mention any reason whatsoever and as such, the same is set-aside. The respondent-State is directed to reconsider the case of the petitioner afresh and pass necessary order

in accordance with policy applicable to his case. It is also expected that in case, the State Government considers certain factors/guidelines due to which the offences other than those mentioned in the policy are also considered under heinous crimes, then the factors and nature of offence and reasoning should also be mentioned.

The writ petition is disposed of with the aforesaid directions.

10.02.2016
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(DAYA CHAUDHARY)
JUDGE