

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Writ Petition No.33 of 2016

.....

Date of decision:13.7.2016

Anil Kumar

...Petitioner

v.

State of Haryana and others

...Respondents

....

**Coram: Hon'ble Mr. Justice Inderjit Singh**

.....

Present: Mrs. Anju Arora, Advocate for the petitioner.

Mr. B.S. Virk, Deputy Advocate General, Haryana for the  
respondent-State.

....

**Inderjit Singh, J.**

This criminal writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a criminal writ seeking premature release of the petitioner as required under para 1 (b) of Memo No.36/135/91-1JJ(II) dated 4.2.1993 (Premature Release Policy) annexed as Annexure-P.4 as the respondent No.1 has wrongly and illegally rejected the premature release case of the petitioner vide Annexure-P.2 dated 1.12.2015 and the same is against the fundamental rights as enshrined under Articles 14, 19 and 21 of the Constitution of India.

Notice of motion was issued in this case.

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Mr. Mr. B.S. Virk, learned Deputy Advocate General, Haryana has put in appearance on behalf of the respondent-State and contested this petition.

I have heard learned counsel for the petitioner and learned State counsel and have gone through the record.

It is mentioned in the reply filed on behalf of the State that the petitioner cannot claim the premature release as a matter of right unless the State Government commutes the sentence of a life convict through a written order under appropriate law. It is only a concession given by the State Government by considering the behaviour of the convict inside the jail, gravity and nature of the offence, manner and circumstances under which the crime was committed. It is also stated in the reply that the case of the petitioner for consideration for premature release was placed before the State Level Committee on 29.10.2015 headed by the Chief Minister Haryana (being Jail Minister) etc. The State Level Committee had observed that this life convict had completed his requisite sentence, but his conduct had not been found satisfactory as this life convict absconded from parole for five years, one month and fourteen days. After considering his case in detail, the State Level Committee recommended to State Government to defer the premature release case of the petitioner for one year and six months.

At the time of arguments also learned State counsel argued that the petitioner is not entitled to premature release in view of his over stayed parole.

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On the other hand, learned counsel for the petitioner placed reliance on the judgment of this Court in Brahma Nand v. State of Haryana and others, 2015 (3) R.C.R. (Cr.) 836, in which it was held as under:-

“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.

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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

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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

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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, cannot sustain. The same is,

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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.”

In view of the law laid down by this Court in the above stated case, I find that the facts of that case are identical to this case. Therefore, in view of the law laid down in the above judgment, the impugned order passed in this case deferring the premature release case etc. is set aside. State authorities are directed to consider the case of the petitioner for his premature release strictly in terms of the Premature policy without taking into consideration the jail offence committed by him and are directed to pass a fresh order preferably within two months from the receipt of certified copy of this order.

The petition is allowed accordingly.

July 13, 2016.

**(Inderjit Singh)**  
**Judge**

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| <b>NOTE:</b> | Whether speaking/reasoned: | Yes |
|              | Whether reportable:        | Yes |