

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-1442-2015

Date of decision :16.08.2017

Jarnail Singh @ Jailli

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. Vijay K. Jindal, Advocate
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

H.S. MADAAN, J.

This criminal writ petition under Article 226 / 227 of Constitution of India for holding that the convict has undergone the entire sentence awarded to him and that his further detention is violative of Articles 14, 19 and 21 of Constitution of India and he deserves to be released unconditionally has been filed by Jarnail Singh @ Jailli, an accused who was convicted by the Court of learned Additional Sessions

Judge, Patiala vide judgment dated 19.05.1999 for offence under Section 18 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (“NDPS Act” - for short) and sentenced to undergo rigorous imprisonment for 10 years and to pay fine of ₹1 lac, in default of payment of fine to further undergo rigorous imprisonment for 02 years.

According to the petitioner, he had filed an appeal against judgment of conviction and order of sentence in this Court, however the same was dismissed on 12.05.2008, as the petitioner was on bail during the pendency of the appeal w.e.f. 06.04.2001, he surrendered in the Court on 12.01.2009 and since then he is behind bars. According to the petitioner had filed special revision petition against judgment of this court, however, it was dismissed by the Hon'ble Apex Court on 11.02.2011. According to the petitioner the jail authorities have calculated the sentence undergone by the petitioner as follows:-

	Y	M	D
i. Under trial period (27.09.1994 to 29.11.1994)	00	02	02
ii. Conviction period from 19.05.1999 to 5.4.2011 and From 12.1.2009 to 16.9.2015	08	06	21
Total Sentence Undergone	08	08	23

It is contended that while undergoing the sentence, the petitioner enjoyed parole for 140 days. Petitioners overstayed the parole period for 110 days and the petitioner also remained on interim bail for 90 days. The jail authorities have illegally and arbitrarily not extended the benefit of the remissions issued by the Governor of Punjab in exercise of

his power under Article 161 of the Constitution of India. If the benefit of remissions granted as per circulars issued under Article 161 of the Constitution is taken into consideration, the petitioner has completed much more sentence than the sentence awarded and there is no valid reason to detain him. The petitioner has attached the circular vide which the Governor of Punjab has granted remissions on some special occasions, copies of which being Annexures A-4 to A-8.

According to the petitioner, the convicts under the NDPS Act cannot be denied the benefit of remissions as has been held in several judicial pronouncements. The issue of grant of remissions to convicts, who were on bail came up before Hon'ble Supreme Court in the case of **D. Ethi Raj vs. Secretary to Government 2011(5) 603 (SC)** and the Hon'ble Apex Court has observed that no circular provide that the convict concerned must actually be physically confined in jail at the time of issuance of the circular. The petitioner has undergone the sentence as under:-

	<i>Y</i>	<i>M</i>	<i>D</i>
Under trial period 27.09.1994 to 29.11.1994	0	2	2
Conviction period from 19.5.1999 to 5.4.2001 12.1.2009 to 16.9.2015	8	6	21
Total	8	8	23
Less (-) on account of interim bail	0	3	0

	<i>Y</i>	<i>M</i>	<i>D</i>
Total	8	5	23
Less on account of over stay of parole period	0	3	20
Actual sentence undergone upto 16.9.2015	8	2	3
Remission as per government circular dated 13.4.2001 Annexure P-4	1	0	0
Remission as per Government circular dated 14.8.2002 Annexure P-5	1	0	0
Remission as per Government circular dated 14.8.2003 Annexure P-6	1	0	0
Remissions as per Government circular dated 21.9.2004 Annexure P-7	1	0	0
Remissions as per Government circular dated 9.11.2005 Annexure P-8	1	0	0
Total Sentence including remissions	13	2	3
Less (-) on account of parole	0	6	0
Total sentence undergone for the purpose of release in FIR 256 dated 23.9.1994, P.S. Sadar Patiala, Under Section 18 NDPS Act	12	8	3

According to the petitioner the sentence awarded to him is 10 years and in default of payment of fine the sentence is of 1 year, total

sentence of 11 years, but he has already undergone 12 years, 8 months and 3 days of total sentence, therefore, his further detention is violative of Articles 14, 19 and 21 of the Constitution of India. Therefore his writ petition be allowed.

On notice respondents appeared and filed reply in the form of affidavit of Superintendent, Central Jail Faridkot. In the said reply preliminary objections have been raised contending that as per the judgment of his conviction and order of sentence, the petitioner is required to undergo rigorous imprisonment for a period for 10 years and to pay fine of ₹1 lac and in default of payment of fine to further undergo rigorous imprisonment for a period of 2 years; that the petitioner was released on bail on 05.4.2001 and after dismissal of his appeal by this Court he surrendered in jail on 12.01.2009; that again he had gone for interim bail for a period of 90 days from 14.01.2010 to 13.04.2010, thereafter the petitioner was released on four weeks' parole w.e.f. 09.03.2011 to 06.04.2011 and was directed to report to jail on 07.04.2011. The petitioner did not act upon it and failed to surrender in jail. On 26.07.2011 he was produced in Court after his arrest with overstay of 110 days. Referring to judgment passed by Hon'ble Apex Court i.e. **Joginder Singh vs. State of Punjab and others** on 11th September, 2001, it is contended that the petitioner is not entitled for the benefit of that remissions, when he was on bail. It is added that the petitioner is entitled to the benefit of remissions granted on 17.04.2000 (03 months), when he was present at jail on the date of issuance of Notification of remissions and that as per direction of Hon'ble Apex Court in **Joginder Singh's** case (supra) the petitioner is not entitled to the benefit of that remission, when he was on bail. Respondents

denied the remaining allegations and prayed for dismissal of the petition.

I have heard learned counsel for the petitioner, learned State counsel, besides going through the record.

In the petition, the petitioner has contended that he has been sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of ₹1 lac and in default of payment of fine to undergo rigorous imprisonment for 2 years in Para No.2 of the petition, but then in Para No.17, he has contended that in default of payment of fine, sentence of one year. In that way the calculations have been carried out wrongly, which is defect in the petition. Secondly as averred in Para No.6 of the petition itself that the petitioner had overstayed the parole for 110 days. If we see Annexure P-4 which is circular issued by Department of Home Affairs and Justice (Jails Branch) with regard to the special remission to prisoners, it provide that the said remissions shall be subject to the conditions namely:-

- i. The prisoners who are on parole or furlough shall be allowed the benefit only in case they report back in jail in time.*
- ii. The prisoners who have been released on bail shall be allowed the benefit only if they surrender in jail within 15 days of receipt of notice in this regard from the Chief Judicial Magistrate concerned from where they had been released on bail.*

Similar provisions are there in the circular Annexures P-5 and P-6 etc. As per own case of the petitioner, he had over stayed the parole

period for 110 days and had not report at the jail gate within time, therefore, he is not entitled to get benefit under such instructions. Therefore, I do not find any merit in the writ petition, the same stands dismissed accordingly.

16.08.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

- 1. Whether reportable? **No**
- 2. Whether speaking / reasoned? **Yes**