

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

**CRWP No.310 of 2015 (O&M)
Date of decision: 23.10.2017**

Baljit Singh		Petitioner
	Versus	
State of Punjab and others		Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Harinder Singh, Advocate
for the petitioner.

Mr. Amandeep S. Gill, Sr. DAG, Punjab.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is for deciding the legal notice dated 30.09.2014 (Annexure P2) vide which the petitioner is claiming premature release.

It is submitted on behalf of the petitioner that the petitioner was an accused in FIR No.12 dated 16.02.2006 under Sections 302, 201, 120-B, 148, 149 IPC and 25/54/59 of the Arms Act registered at Police Station Kurali, District SAS Nagar (Mohali). The petitioner was tried for the said offences and ultimately convicted and sentenced under Sections 302 and 120-B IPC to undergo life imprisonment by the Additional Sessions Judge, Roopnagar on 28/29.10.2009. The petitioner preferred an appeal i.e. CRA-D No.989-DB of 2009, which was dismissed by this Court and thereafter, the petitioner filed Special Leave to Appeal before the Hon'ble Supreme which is pending.

Counsel for the petitioner has further submitted that as per the Punjab Government Instructions dated 08.07.1991, the case of the petitioner is to be considered for premature release after undergoing 14

years of actual sentence and with remission 20 years and in case of heinous crime, after undergoing 12 years of actual sentence and 18 years with remissions. It is further submitted that though he has submitted the aforesaid legal notice but the same has not been decided so far.

Reply by way of affidavit of Officiating Superintendent Maximum Security Jail, Nabha on behalf of respondents No.1 to 4 has already been filed in the Court and in para 1 of the preliminary submissions, it is submitted that a case was registered against the petitioner i.e. FIR No.72 dated 09.04.2014 under Sections 323, 353, 186, 506 read with Section 34 IPC and 52(1) of the Prisons Act, 1894, therefore, as per the Punjab Jail Manual Para 431(1) B-II, the case for premature release could not be considered as he has failed to maintain good conduct and therefore, as per the government instructions dated 04.04.2013, his case will be now considered after 05 years of the registration of the FIR No.72 dated 09.04.2014. It is also submitted that on the date of filing of the affidavit dated 10.09.2015, the petitioner has undergone 09 years and 23 days of actual sentence.

In reply, counsel for the petitioner has relied upon the judgment passed by this Court ***“Brahma Nand vs State of Haryana and others”***, 2015(3) RCR (Criminal) 836 wherein this Court has held as under:-

“7. Learned counsel for the parties have been heard.

*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 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 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, can not sustain. The same is, 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 ***Brahma Nand's case (supra)***, the present petition is disposed of with a direction to respondent No.2 to dispose of the legal notice (Annexure P2) filed by the petitioner in the light of the observations made by this Court in ***Brahma Nand's case (supra)*** preferably within a period of 03 months from the date of receipt of certified copy of this order.

(ARVIND SINGH SANGWAN)
JUDGE

23.10.2017
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No