

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

CRWP No.1187 of 2016 (O&M)

Date of Decision : 03.08.2017

Manish MobarPetitioner

Versus

State of Haryana and othersRespondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE RAJ SHEKHAR ATTRI

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

Ms.Kirti Singh, DAG, Haryana.

MAHESH GROVER, J. (Oral)

The petitioner is aggrieved of the instructions issued by the Government of Haryana, Department of Jails restricting the consideration of his claim for premature release and salient clauses which are essentially a cause of grievance to the petitioner are extracted herebelow :

“2. In supersession of Haryana Government memo No.36/135/91-1JJ(II), dated 8-8-2000 which was further substituted bearing same number and date on 23-2-2001, the Government have decided to revise the policy regarding premature release of life convicts as follows :-

(aa) Convicts whose death sentence has been considered after commuted to life completion of 20 imprisonment and convicts yrs.actual sentence and 25 years total sentence with for life having committed a remissions.
heinous crime such as :-

- (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 undertrial period provided that the total period 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 piece of burning/dragging he body as evident from judgment of the court.

- (xi) Persistent bad conduct in the prison.
- (xii) Convicts who cannot for some definite reasons be prematurely released without danger to public safety.
- (xiii) Convicts who have been imprisoned for life under section 120-B of 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 cases are not covered under (aa) and (a) above and who have committed crime which are not considered heinous as mentioned in clause (aa) & (a) above. Their cases may be considered after completion of 10 years actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 14 years.”

The argument is that it tends to discriminate and create an artificial classification. The petitioner contends that his case for premature release has been wrongfully denied whereas the respondent-State filed a reply saying that the case of the petitioner falls under para 2(a) of the premature policy dated 12.04.2002. His case thus be considered only after completion of 14 years of actual sentence and 20 years of the total sentence. Apart from this the instructions were pleaded to be justified.

Learned counsel for the petitioner contended that at the time of conviction of the petitioner the policy dated 12.04.2002 was

in force and as per the decision of the Hon'ble Supreme Court in *State of Haryana and ors. Versus Jagdish* 2010 AIR (SC) 1690, it has been held that the policy in force was applicable for premature release and on the date of consideration the benefit has to be given to the convict. It was pleaded that the petitioner has undergone actual sentence of 13 years 07 months and 17 days whereas the policy required a period of 10 years and total period of sentence as 14 years. Emphasis were laid that as per the Jail Manual, a maximum of 25% remission can be earned by a prisoner per year as quarterly remission of maximum 60 days and maximum 30 days of remission per year can be granted by the Superintendent of Jail. If this is to be applied to the case of the petitioner then he completes the requisite period of imprisonment to entitle him to premature release. Reliance was placed by the petitioner on the following paragraphs of *Jagdish Singh's* case (supra) :-

“37. Liberty is one of the most precious and cherished possessions of a human being and he would resist forcefully any attempt to diminish it. Similarly, rehabilitation and social reconstruction of life convict, as objective of punishment become of paramount importance in a welfare state. "Society without crime is a utopian theory". The State has to achieve the goal of protecting the society from convict and also to rehabilitate the offender. There is a very real risk of revenge attack upon the convict from others. Punishment enables the convict to expiate his crime and assist his rehabilitation. The Remission policy manifests a process of reshaping a person who, under certain circumstances, has indulged in criminal activity and is required to be rehabilitated. Objectives of the punishment are wholly or

predominantly reformatory and preventive. The basic principle of punishment that "guilty must pay for his crime" should not be extended to the extent that punishment becomes brutal. The matter is required to be examined keeping in view modern reformatory concept of punishment. The concept of "Savage Justice" is not to be applied at all. The sentence softening schemes have to be viewed from a more human and social science oriented approach. Punishment should not be regarded as the end but as only the means to an end. The object of punishment must not be to wreak vengeance but to reform and rehabilitate the criminal. More so, relevancy of the circumstances of the offence and the state of mind of the convict, when the offence was committed, are the factors, to be taken note of."

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"43. The right of the respondent prisoner, therefore, to get his case considered at par with such of his inmates, who were entitled to the benefit of the said policy, cannot be taken away by the policy dated 13.08.2008. This is evident from a bare perusal of the recitals contained in the policies prior to the year 2008, which are referable to Article 161 of the Constitution. The High Court, therefore, in our opinion, was absolutely justified in arriving at the conclusion that the case of the respondent was to be considered on the strength of the policy that was existing on the date of his conviction. State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for pre-mature release would be considered after serving the sentence, prescribed in the short sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that

purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "lifer" for premature release, he should be given benefit thereof.”

There would be no quarrel with the premature release of a person to be considered in terms of the policies which the State introduces from time to time. But the issue before us is whether the policy instructions issued by the State are discriminatory or in conflict with the powers of the State to formulate its policies. The Hon'ble Supreme Court in *Maru Ram v. Union of India* 1980 AIR (SC) 2147 observed as follows :

“23. Sentencing is a judicial function but the execution of the sentence, after the courts pronouncement, is ordinarily a matter for the Executive under the Procedure Code, going by Entry 2 in List III of the Seventh Schedule. Keeping aside the constitutional powers under Arts. 72 and 161 which are 'untouchable' and 'unapproachable' for any legislature, let us examine the law of sentencing, remission and release. Once a sentence has been imposed, the only way to terminate it before the stipulated term is by action under ss. 432/433 or Arts. 72/161. And if the latter power under the Constitution is not invoked, the only source of salvation is the play of power under ss. 432 and 433(a) so far as a 'lifer' is concerned. No release by reduction or remission of sentence is possible under the corpus juris as it stands, in any other way. The legislative power of the State under Entry 4 of List II, even if it be stretched to snapping point, can deal only with Prisons and Prisoners, never with truncation of judicial sentences. Remissions by way of reward or otherwise cannot cut down the sentence as such and cannot, let it be unmistakably understood, grant final exit passport for the prisoner except by the

Government action under s. 432(1). The topic of Prisons and Prisoners does not cover release by way of reduction of the sentence itself. That belongs to Criminal Procedure in Entry 2 of List III although when the sentence is for a fixed term and remission plus the period undergone equal that term the prisoner may win his freedom. Any amount of remission to result in manumission requires action under s. 432(1), read with the Remission Rules. That is why Parliament, tracing the single source of remission of sentence to s. 432, blocked it by the non-obstante clause. No remission, however long, can set the prisoner free at the instance of the State, before the judicial sentence has run out, save by action under the constitutional power or under s. 432. So read, the inference is inevitable, even if the contrary argument be ingenious, that s. 433A achieves what it wants arrest the release of certain classes of 'lifers' before a certain period, by blocking s. 432. Arts. 72 and 161 are, of course, excluded from this discussion as being beyond any legislative power to curb or confine.

24. We are loathe to loading this judgment with citations but limit it to two leading authorities in this part of the case. Two fundamental principles in sentencing jurisprudence have to be grasped in the context of the Indian corpus juris. The first is that sentencing is a judicial function and whatever may be done in the matter of executing that sentence in the shape of remitting, commuting or otherwise abbreviating, the Executive cannot alter the sentence itself. In Rabha's case, a Constitution Bench of this Court illumined this branch of law. What is the jural consequence of a remission of sentence ?

In the first place, an order of remission does not wipe out the offence, it also does not wipe out the conviction. All that it does is to have an effect on the execution of the sentence; though ordinarily a convicted

person would have to serve out the full sentence imposed by a court, he need not do so with respect to that part of the sentence which has been ordered to be remitted. An order of remission thus does not in any way interfere with the order of the court; it affects only the execution of the sentence passed by the court and frees the convicted person from his liability to undergo the full term of imprisonment inflicted by the court, though the order of conviction and sentence passed by the court still stands as it was. The power to grant remission is executive power and cannot have the effect which the order of an appellate or revisional court would have of reducing the sentence passed by the trial court and substituting in its place the reduced sentence adjudged by the appellate or revisional court. This distinction is well brought out in the following passage from Weater's "Constitutional Law" on the effect of reprieves and pardons vis a vis the judgment passed by the court imposing punishment, at p. 176, para 134:-

"A reprieve is a temporary suspension of the punishment fixed by law. A pardon is the remission of such punishment. Both are the exercise of executive functions and should be distinguished from the exercise of judicial power over sentences. 'The judicial power and the executive power over sentences are readily distinguishable', observed Justice Sutherland, 'To render a judgment is a judicial function. To carry the judgment into effect is an executive function. To cut short a sentence by an act of clemency is an exercise of executive power which abridges the enforcement of the judgment but does not alter it qua judgment.'"

Though, therefore, the effect of an order of remission is to wipe out that part of the sentence of imprisonment which has not been served out and thus in practice to reduce the sentence to the period already undergone, in law the order of remission merely means that the rest

of the sentence need not be undergone, leaving the order of conviction by the court and the sentence passed by it untouched.

The relevance of this juristic distinction is that remission cannot detract from the quantum or quality of sentence or its direct and side-effects except to the extent of entitling the prisoner to premature freedom if the deduction following upon the remission has that arithmetic effect.

25. Ordinarily, where a sentence is for a definite term, the calculus of remissions may benefit the prisoner to instant release at that point where the subtraction results in zero. Here, we are concerned with life imprisonment and so we come upon another concept bearing on the nature of the sentence which has been highlighted in Godse's case. Where the sentence is indeterminate and of uncertain duration, the result of subtraction from an uncertain quantity is still an uncertain quantity and release of the prisoner cannot follow except of some fiction of quantification of a sentence of uncertain duration. Godse was sentenced to imprisonment for life. He had earned considerable remissions which would have rendered him eligible for release had life sentence been equated with 20 years of imprisonment a la s. 55 I.P.C. On the basis of a rule which did make that equation, Godse sought his release through a writ petition under Art. 32 of the Constitution. He was rebuffed by this Court. A Constitution Bench, speaking through Subba Rao, J., took the view that a sentence of imprisonment for life was nothing less and nothing else than an imprisonment which lasted till the last breath. Since death was uncertain, deduction by way of remission did not yield any tangible date for release and so the prayer of Godse was refused. The nature of a life sentence is incarceration until death, judicial sentence of imprisonment for life cannot be in jeopardy merely because of long accumulation of remissions. Release would follow only upon an

order under s. 401 of the Criminal Procedure Code, 1989 (corresponding to s. 432 of the 1973 Code) by the appropriate Government or on a clemency order in exercise of power under Arts. 72 or 161 of the Constitution. Godse (supra) is authority for the proposition that a sentence of imprisonment for life is one of "imprisonment for the whole of the remaining period of the convicted person's natural life". The legal position has been set out in the context of remissions in life sentence cases thus (1961) 3SCR 440 at page 447.

Unless the said sentence is commuted or remitted by appropriate authority under the relevant provisions of the Indian Penal Code or the Code of Criminal Procedure, a prisoner sentenced to life imprisonment is bound in law to serve the life term in prison. The rules framed under the Prisons Act enable such a prisoner to earn remissions-ordinary, special and State and the said remissions will be given credit towards his term of imprisonment. For the purpose of working out the remissions the sentence of transportation for life is ordinarily equated with a definite period. but it is only for that particular purpose and not for any other purpose. As the sentence of transportation for life or its prison equivalent, the life imprisonment, is one of indefinite duration, the remissions so earned do not in practice help such a convict as it is not possible to predicate the time of his death. That is why the rules provide for a procedure to enable the appropriate Government to remit the sentence under s. 401 of the Code of Criminal Procedure on a consideration of the relevant factors, including the period of remissions earned. The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under s. 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We,

therefore, hold that the petitioner has not yet acquired any right to release.”

It was observed that there is absolutely no conflict between Articles 72 and 161 and Section 433-A of the Criminal Procedure Code. Likewise, in *State of Haryana v. Mahender Singh & Ors.* **2007(4) R.C.R.(Criminal) 909** it was acknowledged by the Hon'ble Supreme Court that the right of remission or shortening of sentence would be a fundamental right of the prisoner but the State in exercise of its executive power of remission can issue general instructions or special ones but the same have to be applied uniformly. In para 36 of the judgment it was observed that the classification validly made by the State would not offend Article 14 of the Constitution of India. Thus once the executive power of the State has been applied uniformly with the policy not being in conflict with any provisions of law or powers of the State, there would be little substance in the argument of the learned counsel for the petitioner that it discriminates within two classes of convicts those with heinous crimes and those who have been convicted for life but their cases are not covered by clauses (aa), (a) and (b), extracted above, which for the purposes of reference, are extracted once again herebelow :-

“(aa) 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 :-

Their cases may be considered after completion of 20 yrs.actual sentence and 25 years total sentence with remissions.

- (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 undertrial period provided that the total period 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 piece of burning/dragging he body as evident from judgment of the court.

- (xi) Persistent bad conduct in the prison.
- (xii) Convicts who cannot for some definite reasons be prematurely released without danger to public safety.
- (xiii) Convicts who have been imprisoned for life under section 120-B of 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 cases are not covered under (aa) and (a) above and who have committed crime which are not considered heinous as mentioned in clause (aa) & (a) above. Their cases may be considered after completion of 10 years actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 14 years.”

We, therefore, do not find any merit in the instant petition and the same is hereby dismissed.

(MAHESH GROVER)
JUDGE

03.08.2017
dss

(RAJ SHEKHAR ATTRI)
JUDGE

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