

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

**CRWP No.133 of 2016
Decided on: 06.09.2017**

Gurnam Singh @ Gama

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. S.S. Rana, Advocate
for the petitioner.

Mr. Randeep Singh Khaira, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for issuance of a direction to the respondents to release the petitioner prematurely as per the government instructions dated 08.07.1991 (Annexure P1) and dated 23.10.2001 (Annexure P2) and further quashing of the order dated 30.12.2015 (Annexure P3) vide which the claim of the petitioner for premature release has been rejected by the jail authorities.

It is submitted on behalf of the petitioner that the petitioner was arrested by the police in FIR No.253 dated 06.08.2006 registered under Sections 302, 201, 148 and 149 of the Indian Penal Code, 1860 (in short 'IPC') at Police Station Kharar, District Rupnagar. The petitioner was convicted for the said offences and sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for a period of 01 year. It is further submitted that the petitioner is undergoing the sentence and has already suffered incarceration for more than 09 years

and 06 months of actual sentence of imprisonment and with remissions has undergone 17 years, 06 months and 24 days. It is contended that the work and conduct of the petitioner remained good and satisfactory inside the jail as well as outside while the petitioner remained on parole and he has not committed any jail offence, so far.

Counsel for the petitioner has further submitted that as per paragraph 516-B of Punjab Jail Manual, a convict who has undergone actual sentence for a period of 14 years including remissions is eligible for applying to the government for his premature release. Counsel for the petitioner has relied upon the instructions issued by the Punjab Government dated 08.07.1991 (Annexure P1) as well as dated 23.10.2001 (Annexure P2) to submit that a life convict who has undergone actual sentence of 09 years and 12 years including remissions, while being detained in Open Air Agriculture Jail, can apply for premature release. Counsel for the petitioner has further contended that the petitioner is undergoing his sentence in an Open Air Agriculture Jail, Nabha and according to the Custody Certificate dated 10.03.2017 issued by the Superintendent, Open Air Agriculture Jail, Nabha, the petitioner has already undergone approximately 10 years of actual sentence and including remissions, he has undergone approximately 18 years of actual sentence. Counsel for the petitioner has further submitted that the petitioner is not involved in any other case and, therefore, the impugned order dated 30.12.2015 (Annexure P3) dismissing claim of the petitioner is illegal and, thus, liable to be set-aside.

Counsel for the petitioner while assailing the impugned

order (Annexure P3) has submitted that, in fact, the claim of the petitioner has been dismissed on the ground that his case is not covered under the policy instructions dated 04.04.2013. He has further relied upon judgment of the Hon'ble Supreme Court of India "***State of Haryana and others vs Jagdish***", 2010(2) RCR (Criminal) 464 to contend that while considering the case of premature release, the policy of the State Government which was existing on the date of conviction of the accused will apply and subsequent policy will not apply. It is, thus, submitted on behalf of the petitioner that on the date of conviction of the petitioner i.e. **13.03.2001/28.11.2008**, the policy instructions dated 23.10.2001 (Annexure P2) was applicable which provides that where a life convict has undergone actual sentence of 09 years and 12 years including remissions, in an Open Air Agriculture Jail is entitled for premature release. Counsel for the petitioner has relied upon the order passed by this Court in **CRWP No.1280 of 2016 "*Jangir Singh @ Jangiara vs State of Haryana and others*"** decided on 19.12.2016 wherein in similar circumstances, it was directed that the case of a convict will be considered under the old policy which was in vogue at the time of conviction. Accordingly, it is prayed that since case of the petitioner is squarely covered with the policy (Annexure P2), the impugned order dated 30.12.2015 is liable to be set-aside and the petitioner is entitled for premature release, in accordance with the aforesaid policy.

In the reply filed by the Superintendent, Open Air Agriculture Jail, Nabha, it is submitted that though, the case of the petitioner for premature release was initiated by the Superintendent,

Open Air Agriculture Jail, Nabha, however, the Government of Punjab rejected the same in view of the instructions dated 04.04.2013 issued by Punjab Government. It is further submitted in the reply that as per paragraph 3(1)(B) of the Punjab Government Instructions dated 04.04.2013, the case of the petitioner fall under the category of heinous crime as per paragraph 3(1)(A) and, therefore, the petitioner's case will be considered only after, he has completed the actual sentence for a period of 12 years and 18 years.

In reply, counsel for the petitioner, at this stage, has submitted that the case of the petitioner does not fall under the category of heinous crime with reference of Column B of the policy as it does not fall in the categories given in paragraph 3(1)(A) and, therefore, the case of the petitioner cannot be treated under the category of heinous crime.

Keeping in view the above facts and circumstances, the present criminal writ petition is allowed and the order dated 20.04.2016 (Annexure P4) is set-aside. The respondent No.2 is directed to reconsider the case of the petitioner in the light of judgment *State of Haryana and others (supra)*. The fresh order be passed on or before 09.10.2017.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

06.09.2017
yakub

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