

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

**CRWP No.640 of 2016
Decided on: 17.07.2017**

Mohan Singh

....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)

This is a petition filed by the petitioner – Mohan Singh seeking quashing of the order dated 20.04.2016 passed by the jail authorities vide which his case for pre-mature release is rejected.

It is contended by learned counsel for the petitioner that the petitioner was arrested by the police in FIR No.314 dated 24.10.1978 registered under Sections 302, 323 read with Section 34 IPC at Police Station Ghagga, District Patiala. The petitioner was acquitted by the trial Court on 07.05.1979. However, in an appeal filed by the State of Punjab, this Court convicted and sentenced the petitioner under Sections 302, 323 read with Section 34 of the Indian Penal Code (in short 'IPC') on 18.11.1981 and ordered the petitioner to undergo life imprisonment. The SLP (Criminal) No.56 of 1982 filed by the petitioner and his brother was dismissed by Hon'ble the Supreme Court vide order dated 27.07.1993 and as such, the petitioner is undergoing the sentence. It is contended that the petitioner was aged 17

years at the time of commission of offence and as per the custody certificate dated 23.07.2016, has already undergone actual sentence for a period of approximately 11 years and 02 months and his total sentence including remission is approximately 19 years and 02 months.

Counsel for the petitioner has further contended that as per para 516-B of Punjab Jail Manual, a convict who has undergone detention for a period of 14 years including remissions can apply before the Government for pre-mature release. Counsel for the petitioner has further relied upon the instructions issued by the Punjab Government dated 23.10.2001 (Annexure P1) which provides that where a life convict has undergone actual sentence of 09 years and 12 years including remission, in an Open Air Agriculture Jail, he can apply for pre-mature release.

It is not disputed by learned counsel for the State that the petitioner is undergoing sentence in an Open Air Agriculture Jail, Nabha. The petitioner has earlier filed Criminal Writ Petition No.1521 of 2013 which was disposed of on 14.10.2015 with a direction to the respondent to consider the case of the petitioner in view of the relevant policies framed by the Punjab Government which existed at the time of conviction in view of the law laid down by Hon'ble the Supreme Court in ***“State of Haryana and others vs Jagdish”*, 2010(2) RCR (Criminal) 464**. Counsel further contends that in pursuance to this order, the impugned order dated 20.04.2016 has been passed and the prayer for pre-mature release of the petitioner has been declined.

It is further contended on behalf of the petitioner that the only reason given in the impugned order is that the Superintendent of

Police, Fatehabad has not recommended the case of the petitioner for pre-mature release on the ground that the petitioner can commit some heinous crime after pre-mature release from the jail. It is, thus, contended that no reasons have been assigned in the impugned order for declining the case of the petitioner for pre-mature release.

In the reply filed by Superintendent of Police, Open Air Agriculture Jail, Nabha, the total period of sentence already undergone by the petitioner is not disputed and the case of the petitioner is rejected on the ground that the earlier policy has been superseded and a new policy dated 04.04.2013 has been framed by the State of Punjab and according to same, the pre-mature release cases will be considered only after 02 years of passing of rejection order.

Learned counsel for the petitioner has relied upon *State of Haryana and others case (supra)* where it is held that while considering the case of pre-mature release, the policy of the State Government which was existing on the date of conviction of the accused will apply and not a subsequent policy. Learned counsel has also referred to another judgment passed by Hon'ble the Supreme Court *“Bhagwat Saran and others vs State of U.P. And others”, 1983(1) CLR 504*, where it is held that an order of the State Government declining to release the person/convict pre-maturely only on the ground of maintenance of law and order without assigning any reason cannot be sustained.

Keeping in view the above facts and circumstances, the present criminal writ petition is allowed in view of the fact that the petitioner was only 17 years of age at the time of commission of

offence and has already undergone substantive sentence of imprisonment; the order dated 20.04.2016 (Annexure P4) is set-aside and the petitioner is ordered to be released forthwith.

(ARVIND SINGH SANGWAN)
JUDGE

17.07.2017
yakub

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