

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No. 307 of 2017
Date of Decision: 09.11.2017

Rahul @ Shashi Partap ...Petitioner

VERSUS

State of Haryana and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Amit Jaswal, Advocate
for the petitioner.

Mr. Kuldeep Tiwari, Addl. A.G., Haryana.

SURINDER GUPTA, J.(Oral)

Petitioner-Rahul @ Shashi Partap was convicted and sentenced by the trial Court in case bearing FIR No. 414 dated 06.01.2004, registered at Police Station City Bhiwani, as follows:-

<i>Section</i>	<i>Punishment</i>
302 read with Section 34 IPC	Imprisonment for life and to pay fine of ₹10,000/-. In default of payment of fine to further undergo rigorous imprisonment for two years.
25 of the Arms Act	Rigorous imprisonment for two years and to pay fine of ₹5000/-

2. The petitioner filed appeal, which was dismissed and conviction and sentence awarded to him by the trial Court was upheld.
3. Case of the petitioner for his pre-mature release was considered and declined vide order dated 22.09.2016, which reads as follows:-

“The total sentence undergone by the convict in jail

upto 08.08.2016:-

	<i>Y</i>	<i>M</i>	<i>D</i>
<i>Actual Sentence</i>	<i>11</i>	<i>04</i>	<i>12</i>
<i>Total Sentence</i>	<i>14</i>	<i>02</i>	<i>09</i>

The date of conviction of this life convict is 23.02.2007. So, the policy of pre-mature Release dated 12.04.2002 is applicable in this case. His case falls under para (a) (xi), (xii) & (xiii) (persistent bad conduct in prison, danger to public safety and conviction U/s 120-B of IPC) of the above policy dated 12.04.2002. the convict remained involved in four other criminal cases i.e. parole absconding and Arms Act etc. During his confinement, he has absconded thrice from parole. In the trial Court judgment also it has been mentioned by the Convicting Court that accused Rahul, Satender, Bharat Karambir, Manjit Singh and Banti @ Yogender Singh prior to the date of occurrence hatched the conspiracy in order to commit the murder of Ramesh, Masta and thereby committed an offence punishable under Section 120-B of the IPC. The Superintendent of Police, Bhiwani vide her DD No. 51345 dated 14.11.2015 intimated to Deputy Commissioner of Bhiwani s under:-

“A case FIR No. 132 dated 16.03.2010 U/s 8/9 HGCP Act and FIR No. 167 dated 07.03.2012 U/s 8/9 HGCP Act, P.S. City Bhiwani were registered against him and during his arrest he confessed before the police that he prayed the parole in order to finish the Masta

family. That convict Rahul is a hardcore prisoner as defined under Section 2 (a) of the HGCP Act 1988 as amended in 2012 and is not entitled for parole in view of Section 5(a) of 8/9 HGCP Act, 1988 amended in 2012. The Superintendent of Police, Bhiwani has also sent another report vide letter No. 10623-26 dated 16.08.2016 intimating that if convict Rahul is released prematurely he may commit some serious offence which may disrupt law and order situation of the area. Accordingly, his case is to be considered after completion of 14 years of actual sentence including under trial period provided that the total period of such sentence including remission is not less than 20 years.

He has completed 11 years 04 months and 12 days actual sentence including under trial period and 14 years 02 months and 09 days total sentence including remissions and after deducting parole period.”

Keeping in view the above said facts and the recommendations of State Level Committee the pre-mature release of this life convict will be considered after completion of 14 years of actual sentence 20 years total sentence as per policy dated 12.04.2002.”

4. Learned counsel for the petitioner while assailing order has argued that this Court vide order dated 01.11.2017 passed in CRWP No. 558 of 2004, while deciding the petition of co-accused, has observed that petitioner in that case, namely, Bharat and petitioner-Rahul @ Shashi Partap

in this case, were not convicted for offence punishable under Section 120-B IPC, as such, the provisions of para 2 (a) (xiii) of the Policy of 2002, are not attracted in this case of petitioner. About application of para 2 (a) (xi) and (xii), learned counsel for the petitioner has submitted that though the petitioner has jumped the parole and cases were registered against him but he has suffered for the same and parole cannot be declined to him on this ground. Regarding other cases registered against the petitioner, he has submitted that the trial in those cases is pending and pendency of trial will not be a reason to decline pre-mature release of petitioner, who has completed about 15 years of imprisonment and as per provisions of para 2 (b) of the Policy of 2002, he has become entitled for pre-mature release after completion of 14 years of imprisonment.

5. Admittedly, case of the petitioner is covered by the pre-mature release of life convict policy promulgated vide letter dated 12.04.2002 by State of Haryana. It is also admitted that the petitioner has by now undergone about 15 years of imprisonment including remissions. The short question which arises for consideration is as to whether the petitioner has become entitled for pre-mature release as per Policy of 2002? Para 2 (a) (xi) and (xii) of the Policy of 2002, read as follows:-

(a) <i>Convicts who have been imprisoned for life having committed a heinous crime such as :-</i> (i) to (x) xx xx xx xx (xi) <i>Persistent bad conduct in the prison.</i> (xii) <i>Convict who cannot for some definite reasons be prematurely released without danger to public safety.</i>	<i>Their cases may be considered after completion of 14 years actual sentence including under-trial period provided that the total period of such sentence including remissions is not less than 20 years.</i>
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6. Perusal of impugned order and reply filed by the State show

that the petitioner is habitual of committing different crimes and it is clear from the fact that as many as eight FIRs have been registered against him during the period of his sentence. These FIRs were registered as and when petitioner was released on parole. Details of those FIRs are as follows:-

- “(i) *FIR No. 132 dated 16.03.2010, U/s 8/9 of Parole Act, PS City, Bhiwani. Convicted and sentenced to RI for 01 year.*
- (ii) *FIR No. 144/2010 U/s 25/54/59 Arms Act, PS City Bhiwani – Acquitted on 18.09.2010.*
- (iii) *FIR No. 167 dated 07.03.2012 U/s 8/9 of Parole Act, PS City Bhiwani. Convicted and sentenced to RI for 02 years on 12.12.2012.*
- (iv) *FIR No. 258/2012, U/s 25 Arms Act, PS Rajgarh – Convicted and sentenced to RI for 02 years on 12.08.2013.*
- (v) *FIR No. 56 dated 05.04.2011, U/s 285/201/120-B IPC and 42/43 of Prisons Act, PS Loharu, District Bhiwani – Accused not required to be produced in Court as per order dated 23.04.2011 of the Ld. SDJM, Loharu (Bhiwani).*

Pending Cases:-

- (vi) *FIR No. 171 dated 06.05.2017, U/s 06.05.2017, U/s 399/402 IPC and 25 of Arms Act, PS Tosham, District Bhiwani.*
- (vii) *FIR No. 217 dated 24.04.2017 U/s 8/9 of Parole Act, PS City Bhiwani.*
- (viii) *FIR No. 234 dated 30.04.2017, U/s 307/506 IPC and 25 of Arms Act, PS City Bhiwani.”*

7. Thrice, the petitioner had jumped parole. During the period he remained on parole cases under the Arms Act were registered against him and in case bearing FIR No. 167 dated 07.03.2012 and FIR No. 258 of

2012, he has been convicted and sentenced. Superintendent of Police, Bhiwani vide D.O. letter no. 51305 dated 14.11.2015 has intimated the Deputy Commissioner, Bhiwani as follows:-

“A case FIR No. 132 dated 16.03.2010, U/s 8/9 of HGCP Act and FIR No. 167 dated 07.03.2012, U/s 8/9 of HGCP Act, PS City Bhiwani were registered against him and during his arrest he confessed before the police that he jumped the parole in order to finish the Masta family.”

8. Again Superintendent of Police, Bhiwani vide his letter no. 10623-26 dated 16.08.2016 has intimated that if the petitioner is released, he may commit some serious offence, which disrupt the law and order situation in the area.

9. Pre-mature release is not a right but a concession given by the State to prisoners, who have been awarded life sentence. The basic principle on which the State policy is based is the overall conduct of life convict during his confinement in jail. In the case of petitioner, it is evident that he has not only misused the concession of parole given to him but has also indulged in various crimes resulting in registration of several FIRs against him. Superintendent of Police, Bhiwani in his report has categorically stated that the petitioner after his arrest has confessed before the police that he jumped the parole in order to finish Masta family. This report cannot be brushed aside. As per policy, of which which petitioner intends to take benefit, his case may be considered after completion of 14 years of actual sentence including under-trial period, provided that the total period of such sentence including remissions is not less than 20 years.

10. Though, observations in the order that the case of petitioner is

also covered under the provisions of para 2 (a) (xiii) are not tenable but I find no reason to interfere with observations of competent authority that petitioner is not entitled to be released pre-maturely as per provisions of para 2 (a) (xi) and (xii) i.e. persistent bad conduct in prison, danger to public safety.

The instant petition has no merit and the same is dismissed.

November 09, 2017

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(SURINDER GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No