

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP No. 377 of 2017
Date of Decision: 12.12.2017

Rajender Kumar ...Petitioner

VERSUS

State of Haryana and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Baljinder Singh, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

SURINDER GUPTA, J.(Oral)

Petitioner-Rajender Kumar was convicted vide judgment dated 04.06.2004 passed by learned Additional Sessions Judge, Ambala in case bearing FIR No. RC7(S)/96 SIU.V dated 29.10.1996, registered by CBI at Police Station SIU.V./SIC New Delhi for offences punishable under Sections 302, 302 read with Sections 34 and 120-B of Indian Penal Code (for short 'IPC') and awarded the sentence as follows:-

<i>Under Section</i>	<i>Sentence</i>	<i>Fine</i>	<i>In default of fine</i>
302 IPC	RI for Life	₹200/-	Imprisonment for 1 month
302/34 IPC	RI for Life	₹200/-	Imprisonment for 1 month
302/120-B IPC	RI for Life	₹200/-	Imprisonment for 1 month
It was ordered that all the sentences shall run concurrently			

The appeal filed by petitioner (CRA-D-638-DB of 2004) was dismissed. As per custody certificate placed on file, the petitioner has undergone sentence upto 21.11.2017 as follows:-

<i>Sr. No.</i>	<i>Particulars</i>	<i>Period</i>	<i>Years</i>	<i>Months</i>	<i>Days</i>
1	Under trial Period	From 06.12.1996 to 04.06.2004	7	5	29
2	Conviction Period	From 05.06.2004 to 21.11.2017	13	5	16

3	Bail Period,if any (=)	Nil	0	0	28
Total Sentence =			20	11	15
4	Parole availed (-)	04 weeks	0	0	28
5	Details of overstay/absent from Parole	From 09.06.2007 to 17.03.2011	3	9	8
6	Actual Sentence		17	1	9
7	Earned Remission		4	11	7
8	Grand total		22	0	16

It is not disputed that pre-mature release of the petitioner is to be considered as per Government Policy circulated vide letter dated 12.04.2002 (later referred to as “the 2002 Policy”). The competent authority considered the case of petitioner for his pre-mature release. The same was declined vide order dated 03.03.2017 with the observations as follows:-

“The date of conviction of petitioner is 05.06.2004, so the policy of pre-mature dated 12.04.2002 is applicable in this case. This convict was sentenced in a case investigated by CBI hence as per requirement of Section 435 Cr.P.C. the Central Government was consulted. The Central Govt. decided as under:-

“Keeping in view of the above, the Ministry of Home Affairs after due consideration of the Hon'ble High Court order dated 01.06.2016, after taking the facts into consideration as stated by the State Government as well as CBI who have not recommended the case of the petitioner for pre-mature release, as the petitioner had jumped parole and also considering the gravity of the charges framed against Mr. Rajinder Kumar s/o Shyam Lal in a murder case, the case of pre-mature release is found to be bereft of merit and

thereafter his case for pre-mature release is declined.”

In view of above, committee recommends that pre-mature release case be deferred for one year to be reconsidered thereafter.

The pre-mature release case was put up before the State Level Committee on 27.02.2017. The committee has considered his case carefully and does not recommend for present as this life convict alongwith 3 other persons had committed the murder of Sushil Kumar on 22.04.1996. The motive behind the murder was dispute of agriculture land measuring 27 acres between Sh. D.C. Shankhla IAS and Sushil Kumar deceased. The convict was hired to kill Sushil Kumar for ₹5 lacs. This case was investigated by CBI on the orders of the Hon'ble High Court. As the convict was sentenced in a case investigated by CBI hence as per requirement of section 435 of Cr.P.C., the Central Government was consulted. The Central Government found that the case for pre-mature release is found to bereft of merit and thereafter his case for pre-mature release is declined. In view of the above, Committee recommends the pre-mature release be deferred for 01 year.

Keeping in view the observation of the CBI, the Ministry of Home Affairs, the absconding period from parole from 09.06.2007 to 17.03.2011 and after agreeing the recommendation of the State Level Committee, life convict Rajinder Kumar s/o Shyam Lal has not been found eligible for pre-mature release at this stage and is hereby deferred for one

year. His case will be reconsidered after one year.”

Earlier the petitioner had filed petition (CRWP-1093-2015) for direction to respondents to give him pre-mature release on completion of his sentence as per 2002 Policy. In reply filed in that petition, State had taken the plea that case of the petitioner will be considered when he completes 20 years of actual imprisonment including remissions. Petition was disposed of with direction as follows:-

“Learned State counsel argued that the petitioner was not granted premature release on the ground that he has jumped the parole. Learned State counsel has not shown any law to this Court that on this ground remissions/premature release cannot be granted.

Keeping in view the above facts and after the decision of the Hon'ble Supreme Court, I direct that the case of the petitioner be reconsidered by the competent authority preferably within two months from the date of receiving of certified copy of this date, as per law.

Therefore, finding merit in the present petition, the same is allowed.”

Thereafter, the competent authority again considered the case of petitioner and declined the same vide impugned order dated 03.03.2017.

Learned counsel for the petitioner has argued that as per 2002 Policy relating to pre-mature release, the case of a convict is to be considered after completion of 20 years of sentence in the matter of heinous crime and after 14 years of imprisonment which includes 10 years actual imprisonment in case of other crimes. The offence committed by the

petitioner does not fall in the category of heinous crime. Even otherwise, he has undergone more than 20 years of imprisonment and on the recommendation of CBI, which was the prosecuting agency, that it did not consent for pre-mature release of the convict on the ground of gravity of offence and that his life imprisonment should be treated as imprisonment till natural death, are against 2002 Policy and the competent authority has blindly followed those recommendations without considering the spirit of relevant Policy framed by Government of Haryana. The impugned order is not in conformity with objective of the 2002 Policy, which the State has itself framed.

Learned State counsel has argued that pre-mature release is not a right but a concession given by the State Government. In the instant case, challan was filed by the CBI and as per requirement of Section 435 Cr.P.C., the Central Government was consulted, which found the case of pre-mature release of the petitioner bereft of merit, as such, pre-mature release was refused. It will again be reconsidered in March, 2018 and decided afresh keeping in view the conduct of petitioner in jail.

In the matter of grant of pre-mature release to petitioner, Central Government was consulted in this case as per provisions of Section 435 Cr.P.C., which sought recommendation of investigating agency i.e. CBI and gave opinion that keeping in view the gravity of offence, the case of petitioner for pre-mature release is bereft of merit. While reaching this conclusion, competent authority has also looked into the absconding of petitioner from parole during the period 09.06.2007 to 17.03.2011. This fact is admitted that the petitioner had filed CRWP No. 1093 of 2015. The issue that petitioner had absconded during the parole period was also before

this Court in that petition and the plea of Statement Government in this regard was rejected with observation that there is no law that on this ground remission/pre-mature release can be declined and direction was given to competent authority to reconsider the case of petitioner for his pre-mature release.

Perusal of impugned order dated 03.03.2017 shows that while declining pre-mature release of the petitioner, the competent authority had taken into account the recommendations of Ministry of Home Affairs, Government of India, which before giving opinion had sought the view of investigating agency. CBI-the investigating agency had opposed the grant of pre-mature release of the petitioner with remarks as follows:-

“The convict has sought pre-mature release on the guidelines laid down by the State of Haryana after spending 16 years in jail. However, CBI does not consent for pre-mature release of the convict on the ground of gravity of the offence. It also deserves mention here that the Hon'ble Supreme Court in various judgments has held that life imprisonment should be treated as imprisonment till natural death.”

Competent authority also observed that the case of petitioner falls in para 2(a) (viii) of Haryana State Pre-mature Release Policy dated 12.04.2002. While referring to para 2 (a) (viii) of the 2002 Policy, learned State counsel has conceded that this para relates to murder of a woman while in this case the petitioner committed murder of a man and not of a woman. Learned State counsel has emphasized on the fact that it was incumbent on the State Government to take consent of Central Government before considering case of the petitioner for his pre-mature release. This

argument of learned State counsel is not as per provisions of Section 435 Cr.P.C., which provides that the State, while exercising power under Sections 432 and 433 Cr.P.C. to suspend, remit or commute sentence, shall exercise this power after consultation with Central Government in cases mentioned in Section 435 (1) (a) to (c) Cr.P.C. Admittedly, this case was investigated by Delhi Special Police Establishment and State Government was required to consult the Central Government before deciding the grant of pre-mature release to the petitioner. The word used in Section 435 Cr.P.C. is 'consultation' and not 'consent' of Central Government. While perusing order passed by the Ministry of Home Affairs, Government of India dated 25.01.2017, I find that the main reliance has been placed on the report of CBI, investigating and prosecuting agency of the case, which has interest in opposing such request of a convict and has recommended that the life imprisonment should be treated as imprisonment till natural death. It appears that while submitting such report the CBI has given its view about the definition of 'sentence of imprisonment for life' instead of giving opinion over the question as to whether the petitioner has become entitled to pre-mature release as per 2002 Policy of Haryana Government for grant of pre-mature release to life convicts. The impugned order does not refer to State policy or as to whether the petitioner is entitled to pre-mature release as per provisions of the 2002 Policy. The competent authority has committed grave error by getting swayed by the observations of CBI. No doubt pre-mature release is a concession and not a right but when the Government has framed a policy and is applying the same in the matters of other convicts, I find no reason as to why the case of petitioner be not considered under the 2002 Policy of the State. The petitioner as per custody

certificate dated 21.11.2017 has already undergone 22 years and 16 days of imprisonment including the period of earned remissions. As per 2002 Policy of the State of Haryana, case of the convict as per para 2 (a) (xiii) of the 2002 Policy is to be considered after completion of 14 years of actual sentence and 20 years of total sentence including the period of remissions. Even if after expiry of above period, the competent authority finds that the convict does not deserve to be released, it has to give specific reasons for the same. In case of **Gurdev vs. State of Haryana and others, 2014 (4) RCR (Criminal) 746**, this Court has observed as follows:-

“13.If there is a government policy under which benefits are being extended to the life convicts or other prisoners, the State cannot shy away from considering such cases for premature release even of those prisoners who have undergone the requisite period of sentence as laid down in the policy. If the contention of the State is accepted it would amount to keeping the petitioner in jail till the end of his life which cannot be approved unless there was a specific direction of the Court while awarding sentence.

In case of **Raj Kumar vs. State of Punjab and others, 2014 (4) RCR (Criminal) 538** while dealing with similar matter, this Court has observed in para 7 as follows:-

“No convict has a fundamental right of remission of shortening of sentence, but the order of the State Government while rejecting the case of pre-mature release must have reflection about the subjective satisfaction of the competent

authority that the premature release of a convict would be harmful for the society or that there are chances of reoccurrence of offence. Not only this, the persons who are entitled to be released prematurely should not be kept in the prison at the cost of public. Of course the State should protect the law abiding citizens from the criminals, but at the same time, the State also should see that the deserving convicts are released prematurely on completion of prescribed period and are rehabilitated. In Jagdish's case (supra), Hon'ble Apex Court, while relying upon State of Haryana Vs. Mahender Singh, 2007(4) RCR(Crl.) 909, made the following observations:

“38. At the time of considering the case of pre-mature release of a life convict, the authorities may require to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict any more; the socioeconomic condition of the convict's family and other similar circumstances.

39. Considerations of public policy and humanitarian impulses – supports the concept of executive power of clemency. If clemency power exercised and sentence is remitted, it does not erase the fact that an individual was

convicted of a crime. It merely gives an opportunity to the convict to reintegrate into the society. The modern penology with its correctional and rehabilitative basis emphasis that exercise of such power be made as a means of infusing mercy into the justice system. Power of clemency is required to be pressed in service in an appropriate case. Exceptional circumstances, e.g. suffering of a convict from an incurable disease at last stage, may warrant his release even at much early stage. 'Vana Est Illa Potentia Quae Nunquam Venit In Actum' means-vain is that power which never comes into play.

40. *Pardon is an act of grace, proceedings from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment which law inflicts for a crime he has committed. Every civilized society recognizes and has therefore provided for the pardoning power to be exercised as an act of grace and humanity in appropriate cases. This power has been exercised in most of the States from time immemorial, and has always been regarded as a necessary attribute of sovereignty. It is also an act of justice, supported by a wise public policy. It cannot, however, be treated as a privilege. It is as much an official duty as any other act. It is vested in the Authority not for the benefit of the convict only, but for the welfare of the people; who may properly insist*

upon the performance of that duty by him if a pardon or parole is to be granted.”

Competent authority appears to have looked into four reasons while deferring case of petitioner for consideration for his pre-mature. Firstly, the observation of CBI, which has not given any opinion as per State Policy but appears to have opposed the grant of pre-mature release to petitioner being investigating and prosecuting agency. It did not fall in its domain to give opinion to competent authority suggesting sentence of life imprisonment as imprisonment till natural death as the Court in this case has not awarded sentence to petitioner as 'imprisonment for entire remaining life period of petitioner'. Secondly, it took note of observation of Ministry of Home Affairs, which has wrongly considered the case of petitioner under para 2 (a) (viii) instead of para 2 (a) (xiii) of the 2002 Policy. Thirdly, matter of jumping parole was considered and it was observed while deciding earlier CRWP No. 1093 of 2015 that State has not cited any law that on this ground remission/pre-mature release can be declined. Fourthly, the pre-mature release to petitioner was not declined being a heinous crime. Even for category of heinous crime State has put a bar of 20 years imprisonment and the petitioner has undergone imprisonment for more than 22 years.

As a sequel of my above discussion, I am of the considered opinion that the competent authority while deciding the case of pre-mature release of the petitioner has to act as per State Policy and is not supposed to be got swayed by extraneous reasons/recommendations. Though, grant of pre-mature release is not a fundamental right of a convict but while rejecting the case of pre-mature release, the competent authority has to act as per

State Policy.

This petition has merit and the same is accepted. Impugned order dated 03.03.2017 (Annexure P-3) is set aside with direction of competent authority to reconsider the case of petitioner for his pre-mature release by passing a speaking order as per the 2002 Haryana Government Policy regarding pre-mature release of life convicts, within a period of three months of the receipt of copy of this order. In the event of the case of petitioner being not reconsidered within the above stipulated period, he will be allowed temporary release from custody after the expiry of such three months period on furnishing of requisite bail bond and surety bond as directed by concerned authority, till his case is reconsidered by passing a speaking order.

December 12, 2017

jk

**(SURINDER GUPTA)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No