

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

CRWP-885-2017

Date of decision: 06.11.2017

Jitender

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present: Mr. Sham Lal Bhalla, Advocate
for the petitioner.

Mr. Gaurav Bansal, AAG, Haryana.

H.S. MADAAN, J.

This criminal writ petition under Articles 226 / 227 of Constitution of India for issuance of criminal writ for pre-mature release has been filed by petitioner Jitender, now undergoing imprisonment for life and confined in District Jail Karnal for the reason that he has completed sentence of more than 15 years and his co-accused has been released vide order dated 22.09.2016 in the same FIR bearing No.77

dated 25.07.2004 for offences under Sections 148, 149, 323, 324, 452, 506, 307, 302 IPC and Section 25 of the Arms Act, 1959 Police Station Israna, District Panipat and that his further detention is against fundamental rights as enshrined under Articles 14, 19 and 21 of the Constitution of India.

Inter alia in the petition it is contended that the petitioner was tried in FIR No.77 dated 25.07.2004 and was sentenced to undergo imprisonment for life etc. by Additional Sessions Judge, Panipat vide judgment / order of sentence dated 14.08.2008. The petitioner had preferred an appeal against judgment of his conviction and order of sentence but the same was dismissed on 20.03.2012; that eight persons were involved in the case, their particulars and status are as follow : -

<i>Sr. No.</i>	<i>Name of accused</i>	<i>Whether premature release or dropped proceedings or in custody</i>
1.	Jitender son of Ram Kishan resident of village Gawaira, Police Station Israna, District Panipat.	Still in custody
2.	Ram Dia son of Hardeva resident of village Gawaira, Police Station Israna, District Panipat.	Premature released vide order dated 22.09.2016.

<i>Sr. No.</i>	<i>Name of accused</i>	<i>Whether premature release or dropped proceedings or in custody</i>
3.	Partap singh son of Biccha resident of village Gawaira, Police Station Israna, District Panipat.	Proceedings dropped since died during trial.
4.	Balraj son of Partap resident of village Gawaira, Police Station Israna, District Panipat.	Proceedings dropped since died during trial.
5.	Dharender son of Partap resident of village Gawaira, Police Station Israna, District Panipat.	Premature released vide order dated 22.09.2016.
6.	Tirlok son of Bichha resident of village Gawaira, Police Station Israna, District Panipat.	Premature released vide order dated 22.09.2016.
7.	Bija alias Bijender son of Trilok resident of village Gawaira, Police Station Israna, District Panipat.	Premature released vide order dated 22.09.2016.

<i>Sr. No.</i>	<i>Name of accused</i>	<i>Whether premature release or dropped proceedings or in custody</i>
8.	Suresh son of Partap Singh resident of village Gawaira, Police Station Israna, District Panipat.	Premature released vide order dated 22.09.2016.

In that way five of the convicts have been given premature release vide order dated 22.09.2016 passed by respondent No.3 by exercising power conferred under Sub-Section (i) of Section 432 read with Section 433 of Cr.P.C.. However that benefit had been denied to the petitioner though being similarly placed as such he has prayed that the instant petition be allowed.

On notice, the respondents appeared, they have filed a joint reply contending therein that in case **Maru Ram vs. Union of India (1981) 1 SCC 107**, and in another case titled as **Mohd. Munna vs. Union of India and other Supreme Court Cases 2005(7) 417**, the Apex Court has held that sentence of imprisonment for life was nothing less else than an imprisonment which lasts till the last breath. A sentence of imprisonment for life is an imprisonment for the whole of the remaining period of the convicted person's natural life, unless, the said sentence is commuted or remitted by appropriate authority under the relevant provision of Indian Penal Code or the code of Criminal Procedure.

Therefore, the convict cannot claim premature release as a matter of right; that the petitioner was convicted and sentenced to undergo life imprisonment in case FIR No.77 dated 25.07.2004 by Additional Sessions Judge, Panipat; that in view of the judgment rendered by the Apex Court in State of **Haryana and others vs. Jagdish JT 2010(3) Supreme Court 341**, the premature case of a prisoner sentenced to life imprisonment has to be considered in light of the policy that was existing on the date of his conviction; that the petitioner remained absconder during the trial of the case and was arrested on 31.03.2006, therefore, his trial was conducted separately from his other co-accused, who were sentenced on 21.08.2007 and were covered by Premature Release Policy framed by the Government of Haryana issued orders dated 13.08.2008 dated 12.04.2002; that the premature release case of the petitioner falls under Para (b) of Premature Release Policy framed by the Government of Haryana issued vide order dated 13.08.2008, which provides that convicts who have been imprisoned for life having committed any crime which is defined in IPC and / or NDPS Act as punishable with death sentence. Their cases for pre-mature release may be considered after completion of 14 years of actual sentence including remission is not less than 20 years. Giving the details of the sentence undergone by the petitioner, it is contended that on the date of filing reply i.e. 03.09.2017 he had undergone total sentence of 15 years and 09 months and actual sentence of 11 years, 06 months and 03 days, less than the required actual sentence of 14 years of total sentence of 20

years. They have prayed for dismissal of the petition.

I have heard learned counsel for the parties, besides going through the record and I find that there is no merit in the petition. It comes out from the record that though there were eight accused in case FIR No.77 / 2004, the petitioner being one of them, however as submitted by the respondents in the written reply that he had absconded during trial and was arrested on 31.03.2006, resultantly his trial was conducted separately from his other co-accused, who were sentenced on 21.08.2007, whereas the petitioner was sentenced on 18.08.2008. It is well settled law that date of conviction is crucial to determine as to what policy is to be applicable to the convict. According to the petitioners the other accused in the FIR who had been convicted earlier have been granted the benefit of premature release. In terms of the policy dated 12.04.2002 which provided that the cases of convict may be considered after completion of 14 years of actual sentence including under-trial period of such sentence including remission is not less than 20 years, whereas policy applicable on the date of conviction of the petitioner was published vide Notification dated 13.08.2008 providing that their cases for premature may be considered after completion of 14 years actual sentence including under trial period provided that total period of such sentence including remissions is not less than 20 years. The case of the petitioner is not covered by such guidelines, therefore, he cannot ask for parity with his co-accused, who had been convicted earlier since they are to be governed by

the policy applicable at that time. Furthermore, the petitioner cannot certainly ask for premature release as a matter of right since his case does not fulfill necessary criteria for being given premature release as per policy applicable to him.

The petition is doomed for failure and is dismissed accordingly.

06.11.2017
Gaurav Sorot

(H.S. MADAAN)
JUDGE

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| 1. | Whether reportable? | Yes |
| 2. | Whether reasoned / speaking? | Yes |