

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

278

**CRWP-989-2017
DATE OF DECISION:12.10.2017**

SOHAN LAL AND ANR.

... Petitioner(s)

Versus

STATE OF HARYANA AND ORS.

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Vijay Singh, Advocate
for the petitioners.

Mr. Vikramjit Singh, Additional Advocate General,
Haryana.

ANUPINDER SINGH GREWAL, J. (ORAL)

This criminal writ petition has been preferred for issuance of direction to respondents to prematurely release the petitioners in terms of the policy of the Government of Haryana issued on 13.08.2008 (Annexure P-1). The petitioners have also impugned the action of respondents in not sending their case for consideration to the competent authority.

The petitioners were accused in FIR No.165 dated 23.06.2005. Although they were charged under Sections 120-B, 396, 302, 412 & 216-A of IPC and Section 25 of Arms Act but they were convicted only under Sections 394/120-B of IPC by the Sessions Judge, Panchkula vide judgment dated 22.12.2009 and sentenced to undergo imprisonment for life on 24.12.2009. The petitioners had preferred separate appeals thereagainst, which along

with appeals of other accused, were decided vide common judgment on 29.05.2015 in CRA-D-148-DB of 2011 whereby the appeals were dismissed.

Learned counsel for the petitioners has contended that both the petitioners have undergone an actual sentence of over 10 years and along with remissions sentence of over 14 years and therefore, they would be eligible for premature release as their case would fall in category (c) of the policy dated 13.08.2008. He further contends that the case of the petitioners was recommended by the Superintendent, Central Jail, Ambala and it has been erroneously sent back by the Director General of Prisons vide the order dated 16.06.2017 (Annexure P-3).

In response to the notice, the respondents have filed reply, wherein it is stated that as both the petitioners were involved in conspiracy to commit dacoity and during dacoity, their co-accused Sukhwinder and Harvinder committed double murder and were convicted under Section 302 of IPC, the petitioners were also liable for equal punishment with their co-accused Sukhwinder and Harvinder. Thus, their case falls in category (b) of policy and as they have not completed actual sentence of 14 years they are not eligible for premature release.

The custody certificates of the petitioners have been filed by the learned State counsel, which indicate that petitioner No.1-Sohan Lal has undergone an actual sentence of 12 years, 01 month and 16 days and after including remissions a period of 14 years, 08 months and 02 days while the petitioner No.2-Rajesh Kumar has

undergone actual sentence of 11 years, 06 months and 02 days and after including remissions, sentence of 14 years, 01 month and 04 days as on 12.10.2017.

Heard.

In the policy issued by the Government of Haryana on 13.08.2008 for premature release of life convicts, the convicts have been classified into several categories on the basis of nature of conviction and sentence. The period of sentence after which they would be considered for premature release has also been specified thereunder.

The relevant extract of the policy which is necessary for the issue at hand reads as under:-

(b) 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 actual sentence including undertrial period; provided that the total period of such sentence including remissions is not less than 20 years.
(c) Convicts who have been imprisoned for life having committed a crime which is defined in IPC as punishable with life imprisonment but not with death sentence.	Their cases may be considered after completion of 10 years actual sentence including undertrial period; provided that the total period of such sentence including remissions is not less than 14 years.

It is manifest from bare reading of category (b) of the policy that convicts undergoing life imprisonment for an offence punishable with death sentence would be considered for premature release after completion of 14 years of actual sentence and sentence of 20 years including remissions. Category (c) of the policy stipulates

that convicts, who have been sentenced to life for an offence, which is not punishable with death, would be eligible for premature release on completion of 10 years of actual sentence and sentence of 14 years after including remissions.

The petitioners have been convicted under Section 394/120-B of IPC. The maximum sentence stipulated in Section 394 IPC is life imprisonment. They were acquitted for offence under Section 302 of IPC by the trial Court. This was affirmed by the Division Bench of this Court which is stated to have attained finality.

The relevant extract of the judgment of the Division Bench pertaining to the petitioners is reproduced hereunder:-

"Since accused Sohan Lal and Rajesh Kumar did not enter the house of the deceased Hari Krishan Gupta and were watching the affairs by standing outside, as such, they have rightly not been convicted under Section 302 IPC. There is nothing on record that they also had any common intention of murdering Hari Krishan Gupta and Pushpa Gupta deceased, though they might have common object to commit theft in their house."

It is, thus, apparent that the case of the petitioners for consideration for premature release would fall in category (c) of the policy.

It is also apt to notice that Superintendent, Central Jail, Ambala had recommended the case of the petitioners for premature release to the Director General of Prisons on 30.01.2017. It is mentioned therein that as the case falls under category (c) of the

policy, it is fit to be put up before the State level Committee for necessary action.

The petitioners, having been convicted only under Sections 394/120-B of IPC and Section 394 of IPC providing for a maximum sentence of life imprisonment are, therefore, eligible for consideration of their case in terms of category (c). The refusal of the Director General of Prisons to refer the case of the petitioners to the competent authority is patently erroneous. The relevant extract of the order of the Director General of Prisons dated 16.06.2017 is reproduced hereunder:-

"2. The premature release case of the both above convicts has been considered in the Head Office. As per the trial Court judgment dated is found that both the above convicts have committed double murder and robbery. So the premature release case of both convicts is covered under para 2(b) of the premature release policy dated 13.08.2008 for which they are required to undergo 14 years actual sentence and 20 years total sentence. So you are directed to send the premature release case of the life convicts Rajesh Kumar son of Dayal Chand and Sohan Lal son of Ramesh Sharma after completion of 14 years actual sentence and 20 years total sentence. Please inform the convicts also accordingly."

Once the trial Court has acquitted the petitioners under Section 302 of IPC, which has been upheld by the Division Bench of this Court, the Director General of Prisons cannot state that the

petitioners have committed double murder. It is, thus, difficult to fathom as to how he has arrived at such a conclusion.

There is, of course, no right to the convict to be prematurely released but he has a right to consideration under the relevant rules and/or instructions/policy applicable thereto. The consideration has to be just and fair. In the instant case the refusal of Director General of Prisons to send the case of the petitioners to the competent authority is clearly arbitrary and unreasonable.

Consequently, the petition is allowed and order dated 16.06.2017 (Annexure P-3) is set aside. The competent authority is directed to consider the case of the petitioners for premature release in accordance with law and the policy, within a period of 04 weeks from the receipt of copy of this order.

12.10.2017

SwarnjitS

**(ANUPINDER SINGH GREWAL)
JUDGE**

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