

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

Crl. Writ Petition No. 1281 of 2016 (O&M)
Date of decision: February 15, 2018

Gurmeet Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. S.S. Rana, Advocate
for the petitioner.

Mr. A.S. Sandhu, Additional Advocate General, Punjab.

JAISHREE THAKUR, J.

1. This is a petition filed under Article 226 of the Constitution of India seeking consideration of the case of the petitioner as per government Instructions (Annexure P-1) dated 08.07.1991 for premature release of the petitioner.

2. The petitioner was arrested under a FIR No. 23 dated 17.4.1993 under Sections 302, 460, 376 (2) (g), 397, 323, 404, 34 IPC Police Station Dayalpura District Bathinda. The petitioner was sentenced to undergo life imprisonment by the Sessions Judge, Bathinda on 10.10.1996 and the Criminal Appeal filed by him was dismissed by this Court on 26.07.2002. Having undergone more than 23 years 5 months of actual sentence of imprisonment and including remissions more than 31 years of sentence (at the time of filing of the criminal writ petition), the petitioner seeks premature release relying upon Instructions dated 08.07.1991. The

representation of the petitioner was declined by order dated 09.11.2015, leading to the filing of the instant petition.

3. Mr. Rana, learned counsel appearing on behalf of the petitioner, contends that the petitioner herein having undergone more than 23 years 5 months of actual sentence of imprisonment and including remissions more than 31 years of sentence would be entitled to premature release, as he fulfills all the conditions as per government Instructions dated 08.07.1991. It is argued that his case was rejected by the government on 17.09.2015 on the ground that the petitioner had committed a heinous crime. It is argued that similarly situated persons, who had been convicted for heinous crimes like the petitioner, had been released and non consideration of the case of the petitioner tantamounts to discrimination. It is argued that the law laid down by the Supreme Court in **Union of India Versus V. Sriharan @ Murugan and others** reported as 2016 (1) RCR 234 is fully applicable to the facts of the present case. Reliance is also placed upon a judgment rendered in **Dharma Pal Vs State of Uttar Pradesh and others 2013 (9) SCC 798** where a person sentenced to undergo life imprisonment was released on completion of 14 years of imprisonment.

4. Per contra, Mr. A.S. Sandhu, learned counsel appearing on behalf of the respondent—State, submits that the case of the petitioner has been considered and rejected on the ground that he has been convicted for a heinous crime. It is argued that any convict undergoing life imprisonment, as in the case of the petitioner, cannot claim premature release as a matter of right. It is submitted that if the convict is released prematurely or is granted interim bail, it will be against the principles of natural justice as the

petitioner has committed the heinous crime of murdering Gurcharan Singh and also committing a gang rape on three helpless females belonging to the deceased family, one being a minor.

5. I have heard the counsel for the parties and with their assistance have perused the pleadings of the case.

6. The judgment rendered by the Constitution Bench in **V. Sriharan @ Murugan (supra)** formulated several questions one of them being: *‘Whether imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code are meant imprisonment for rest of the life of the prisoner or a convict undergoing life imprisonment has a right to claim remission and whether as per the principle enunciated in paras 91 to 93 of Swami Shraddhananda (2), a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?’*.

The Constitution Bench further split the question framed into two parts:

“(i) As to whether the imprisonment for life means till the end of convict's life with or without any scope of remission? and (ii) whether a special category of sentence instead of death for a term exceeding 14 years can be made by putting that category beyond grant of remission?. On a detailed examination of various case law and the statutes the first part of the question was answered in para 61, holding that *‘imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code only means imprisonment for the rest of the life of the prisoner subject, however, to the right to claim remission, etc, as provided under Articles 72 and 161 of the*

7. The petitioner is relying on policy dated 08.07.1991 formulated for grant of remissions of sentence of life imprisonment. Indisputably, the State government formulated policy dated 08.07.1991 in exercise of powers of the Government under Sections 432, 433, 433(A) of the Code of Criminal Procedure and Article 161 of the Constitution of India. Para 1.1 of the policy (Annexure P-1), in a tabulated form, has categorized the convicts in five categories namely 'A', 'B', 'C', 'D' and 'E'. The case of the petitioner, admittedly, falls in category 1.1 'B'. The aforesaid policy instructions also makes reference to heinous crimes as under:

“ 1.1 Minimum period of imprisonment to be undergone for the convict before consideration of application for exercise of powers of the Government under Article 161 of the Constitution. Case will be considered by the Government for grant of remission after the following periods of imprisonment are undergone by the convict:-

(Periods of Years)

A	B	C	C	E
For convicts whose death sentence has been committed to life which imprisonment.	Convicts who have been imprisoned for life for offences for which death is a punishment and have committed heinous crime.	Convicts who have been imprisoned for life for offences for death is a penalty but crimes are not considered heinous.	Other life convicts imprisoned for life for offences for which the death penalty is not a punishment and have committed heinous crimes.	Other life convicts.

Actual imprisonment	Imprisonment with remission	Actual imprisonment	Imprisonment with remission	Actual imprisonment	Imprisonment with remission	Actual imprisonment	Imprisonment with remission	Actual imprisonment	Imprisonment with remission
Adults 14	20	12	18	10	14	10	14	8-1/2	14
Female Min-									
Ors 10	14	8	12	8	12	8	12	6	18

A. *Heinous crime with reference to column ‘B’ of 1(1) above are defined as follows :-*

- (i) Offence under section 302 along with 347 of the IPC i.e. murder with wrongful confinement for extortion*
- (ii) Section 302 with 375, i.e. murder with rape.*
- (iii) Offence under Section of IPC i.e. dacoity with murder.*
- (iv) Offence under section 302 along with offences under the Terrorist and Disruptive Activities (Prevention) Act 1987.*
- (v) Offence under Section 302 alongwith offences under the untouchability (offence) Act 1955.*
- (vi) Offence under Section 302 where murder has been committed in connection with any dispute over dowry and this is indicated in the judgment of the trial court.*
- (vii) Offence under Section 302 where the victim is a child under the age of 14 years*
- (viii) Any conviction under Section 120-B of the IPC heinous crime with reference to column ‘D’ of the revised policy are defined as follows :-*
 - (i) Offence under Section 304 (b) of the IPC, i.e. a dowry death.*

- (ii) *Offence under Section 304 alongwith section 347 of the IPC, i.e. culpable homicide with wrongful confinement for extortion.*
- (iii) *Offence under Section 304 with Section 375, i.e. culpable homicide with rape.*
- (iv) *Offence under Section 304 alongwith offence under the Terrorist and Disruptive Homicide Activities (Prevention act 1987)*
- (v) *Offence under Section 304 where culpable homicide has been committed in connection with any dispute on dowry and this is indicated in the judgment of the trial court.*
- (vi) *Offence under section 304 where the victim is a child under the age of 14 years.*
- (vii) *Any conviction under Section 120-B of the IPC i.e. for criminal conspiracy in connection with the above crime.”*

8. The argument raised that premature release can not be ordered as the Supreme Court in its interim order dated 09.07.2014 in Writ Petition (Criminal) No. 48 of 2014 had ordered that a convict would not be released by granting remission or commutation till he completes a fixed term such as 20 years or 25 years of like, when sentence is under any Central Law or under Section 376 of the Indian Penal Code or any other similar offence. It is pertinent to mention here that this interim order would not be applicable since the final judgment has already been rendered in **Union of India Versus V. Sriharan @ Murugan and others (supra) on 02.12.2015.**

9. Once the State Government has taken a conscious policy decision in regard to pre-mature release of convicts who have been awarded imprisonment for life and further categorized offences, which fall in the

category of heinous crimes for the purpose of pre-mature release, the State government is bound by its decision. The policy as applicable pertaining to grant of premature release would be the policy that was in existence on the date of the conviction. In this regard, reference is made to judgment rendered in **State of Haryana and others Versus Jagdish 2010 (2) RCR (Criminal) 464**. In the instant case, the petitioner stood convicted by the Sessions Judge, Bhatinda, on 10.10.1996 and, therefore, the policy as existing on 08.07.1991 is to be taken into consideration, while determining whether the petitioner herein is entitled to grant of premature release.

10. In this view of the matter, the impugned order cannot be allowed to sustain and is accordingly set aside. The State of Punjab is directed to re-consider the case of the petitioner in the light of the relevant policy framed by the Punjab Government. The State of Punjab shall re-consider the case of the petitioner and take a final decision in the matter within a period of two months from the date of receipt of a certified copy of this order. In case the respondent-State fails to take a final decision in the matter within stipulated period, the petitioner shall be released on parole on his furnishing personal bond and surety bond to the satisfaction of the District Magistrate concerned. The petitioner shall give an undertaking that he will not leave the country without prior permission of the Court and will keep peace and shall not indulge in any criminal activity during parole. After receipt of order from the State Government, Superintendent, Central Jail, Bhatinda, shall inform the petitioner accordingly. However, if the case of the petitioner is not accepted by the State of Punjab, the petitioner shall surrender before the jail authorities on receipt of necessary information in this regard.

11. The petition stand disposed of accordingly.

February 15, 2018
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No