

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

Criminal Writ Petition No. 1214 of 2017 (O&M)

Date of decision : March 23, 2018

Sarabjit Kaur

.....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

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

Mr. Anmol Singh Sandhu, AAG, Punjab.

LISA GILL, J.

Prayer in this petition is for directing the respondents to release the petitioner in terms of Government Policy dated 08.07.1991 (Annexure P-1) and for quashing of order dated 07.07.2017 (Annexure P-2) whereby the case of the petitioner for premature release has been rejected on the ground that she is guilty of a jail offence, therefore, her conduct was not good and satisfactory, thereby disentitling her for consideration for premature release.

Brief facts necessary for adjudication of this case are that the petitioner was convicted for the offences punishable under Sections 302/34 IPC (arising out of FIR No. 74 dated 05.11.1998 under Sections 302, 304B, 34, 498A IPC registered at Police Station Sudhar) vide judgment dated 07.06.2004 passed by the learned Additional Sessions Judge, Ludhiana and sentenced to undergo life imprisonment. CRA-D-333-DB-2005 preferred by the petitioner was dismissed on 31.08.2006. It is contended that the case of the petitioner falls under category 1.1 (c) of the Government instructions dated 08.07.1991 which requires the convict to undergo eight years of actual sentence and 12 years with remissions. It is submitted that the case of the

petitioner for grant of premature release was initiated on 23.05.2017 and rejected on 07.07.2017 (Annexure P-2) due to registration of FIR No. 12 dated 10.01.2015 under Sections 186, 332, 353, 148, 149 IPC. The petitioner's case for premature release was earlier rejected twice on 07.07.2010 and 21.09.2012. The petitioner, it is contended, has undergone the requisite period of the sentence as required in terms of the policy applicable to the petitioner. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***State of Haryana versus Ghaseeta Ram 1997 (3) SCC 766*** and the judgment of this Court in ***Kamal Kant Tiwari versus State of Punjab and others 2014 (2) RCR (Criminal) 940*** to submit that commission of a jail offence is not a valid ground to deny premature release of an accused, especially when the person is liable to be punished separately for the said jail offence. It is, thus, prayed that this petition be allowed.

Learned counsel for the State while not denying the period of custody undergone by the petitioner submits that the impugned order dated 07.07.2017 has been rightly passed. The petitioner's case for premature release has to be considered after a period of five years from the commission of jail offence. It is, thus, prayed that this petition be dismissed.

Heard, learned counsel for the parties.

In the reply by way of affidavit dated 14.03.2018 of Smt. Damanjit Kaur Walia, Superintendent Women Jail, Ludhiana, filed on behalf of the State, it is mentioned that the petitioner has undergone 18 years, 06 months and 11 days of the actual sentence as on 22.05.2017. In case, the period of remission is included, she has undergone 25 years, 06 months and 07 days of the sentence imposed upon her. It is specifically mentioned that for the jail offence (FIR No. 12 dated 10.01.2015), the

petitioner was sentenced to undergo rigorous imprisonment for six months.

The sole premise, on which the case of the petitioner for consideration of premature release has been rejected, is that she was convicted for the jail offences and the period of five years therefrom has not lapsed.

This Court in **Kamal Kant Tiwari's** case (supra) specifically observed that it is not permissible for the authorities to reject the case of the convict for premature release only on the ground that he is guilty of a jail offence. Reference was made to the decision of this Court in ***Raj Kumar versus State of Punjab etc.*** in CRM-55534-M-2006 dated 12.12.2006, wherein it was observed that:-

“ The counsel for the petitioner has relied on a judgment of this Court in the case of **Subkash v. State of Haryana, 1994 (3) Recent CR 489** to urge that commission of jail offences would be no legal or valid ground to deny the concession of premature release if it has become due, specially so when the convict had already been punished for the jail offences. While so holding, this Court in Subhash's case (Supra) has relied on the case of **Lila Singh v. State of Punjab, 1988 (1) RCR 28**. It was held that jail offences committed by the convict for which he has already been punished, cannot be taken into consideration while deciding the case for premature release. Admittedly, the case of the petitioner for consideration on his premature release has been declined on the ground that the same can be considered only if the convict has maintained a good conduct in jail. As per the reply, good conduct means that the person has not committed any jail offence for a period of five years prior to the date of his eligibility for consideration of release. It is accordingly pleaded that the benefit of premature release cannot be granted to the petitioner as his case is not covered by the instructions, as aforementioned. The stand of the State cannot be appreciated being contrary to the law laid down by this Court. The case of

the petitioner is fully covered by the judgment of this Court, referred to above. It has been clearly held by this Court that commission of a jail offence is no legal ground to deny the premature release, especially when the person has been punished for such a misconduct. Accordingly, the action of the respondents in not considering the case of the petitioner for premature release cannot be sustained. The petitioner is entitled to a consideration of his case for premature release in terms of the instructions, Annexure P-1.”

Therefore, keeping in view the facts and circumstances of the case, it is concluded that the impugned order dated 07.07.2017 (Annexure P-2) was erroneously passed by Additional Chief Secretary, Punjab Government Home Affairs and Justice Department and the same is set aside.

The State authorities are directed to consider the case of the petitioner for premature release without taking into consideration the jail offence committed by her and pass necessary orders within two months of receipt of certified copy of this order, failing which the petitioner be released on parole on her furnishing personal bonds and surety to the satisfaction of the concerned District Magistrate. The petitioner shall give an undertaking that she will not leave the country without prior permission of the Court while maintaining peace and not indulge in any nefarious activity while on parole.

Present petition is, accordingly disposed of.

(Lisa Gill)
Judge

March 23, 2018

rts

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