

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

**CRWP No. 1408 of 2017
Date of Decision: 23.05.2018**

Jaswinder Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL.

Present:- Mr. Vijay Singh, Advocate, for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

LISA GILL, J. (Oral)

Petitioner seeks the quashing of order dated 17.08.2017 (Annexure P-2) whereby his case for premature release has been declined.

Brief facts necessary for the adjudication of the case are that FIR No. 26 dated 01.04.2007 under Sections 376/307 IPC, Police Station Shahzadpur, was registered against the petitioner. The petitioner was convicted for the offence punishable under Section 376 IPC and sentenced to undergo life imprisonment by the learned Additional Sessions Judge, Fast Track Court, Ambala vide judgment and order dated 14.08.2008. CRA-D-786-DB-2008 filed by the petitioner, challenging the judgment and order was dismissed on 17.05.2013.

The petitioner claimed to be entitled for being considered for premature release under para 2(c) of the Government Policy dated 13.08.2008 issued by the State of Haryana. His case was accordingly initiated by the authorities and presented before respondent No.2.

Petitioner's case for premature release was, however, dismissed by the Additional Chief Secretary to Government of Haryana Jails Department vide impugned order dated 17.08.2017, while observing that the petitioner's case is covered under Para 2(b) of the above said policy, therefore, his case can be considered only after he has completed 14 years of the actual sentence imposed upon him.

Aggrieved therefrom present petition has been filed.

Learned counsel for the petitioner submits that the impugned order has been wrongly passed in contravention of the Policy of the State itself. Para 2(b), it is urged is applicable to the convicts who have been imprisoned for life having committed any crime defined in the Indian Penal Code and/or Narcotics Drugs and Psychotropic Substances Act, which is punishable with death sentence whereas the petitioner has been convicted for the offence punishable under Section 376 IPC which is not punishable with death. Therefore, the said order be set aside.

Heard learned counsel for the parties.

Clause 2(b) and 2(c) of Policy dated 13.08.2008 read as under:-

X	X	X	X	X
X	X	X	X	X
(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		There cases for pre-mature release may be considered after completion of 14 years actual sentence including under trial 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		Their cases may be considered after completion of 10 years actual sentence including undertrial period,		

crime which is defined in IPC as punishable with the life imprisonment but not with death sentence.	provided that the total period of such sentence including remissions is not less than 14 years.
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Section 376 IPC reads as under:-

'1[376. Punishment for rape.—

(1) Whoever, except in the cases provided for in sub-section (2), commits rape shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer commits rape—

- (i) within the limits of the police station to which such police officer is appointed; or
- (ii) in the premises of any station house; or
- (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital;or'

Learned counsel for the State is unable to deny that the petitioner has been convicted for the offence punishable under Section 376 IPC which is not punishable with death sentence. Perusal of the policy in question reveals that the petitioner is entitled to have his case considered

for premature release in terms of the clause 2(c) of the policy. The petitioner's case has been wrongly rejected on the ground that his case is covered under clause 2(b) of the Policy.

Accordingly impugned order dated 17.08.2017 is set aside. It is directed that the petitioner's prayer for premature release be considered by the competent authority in accordance with law within a period of four months from the date of receipt of certified copy of this order.

May 23, 2018
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(LISA GILL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No