

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

CWP No. 11179 of 2018

Date of Decision: 04.09.2018

RAKESH

....Petitioner(s)

VS.

STATE OF HARYANA AND OTHERS

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.

Present: Mr. Lajpat Sharma, Advocate,
 for the petitioner(s).

Ms. Safia Gupta, AAG, Haryana.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has challenged the order dated 25.12.2017 passed by respondent No. 1 by which his case for premature release has been rejected.

In brief, the petitioner was tried in a case registered vide FIR No. 69 dated 20.03.2000 under Section 302 read with Section 34 IPC at Police Station Rai, District Sonapat in which he was convicted by the Additional Sessions Judge, Sonapat on 30.03.2002 for committing murder of one Ajit Singh by giving knife blows and sentenced him to suffer life imprisonment. The petitioner has allegedly spent 11 years 9 days of actual sentence and 14 years 11 days of total sentence. His case was considered by the Committee in terms of the Policy dated 08.08.2000 but respondent No. 1 has rejected his application on the ground that his case is covered under Para 2(a)(xiii) of the said Policy which deals with the persistent bad conduct and brings the case within the definition of heinous crime.

It is observed in the impugned order that the various cases were registered against the petitioner of committing theft, dacoity, Arms Act etc.

CWP No. 11179 of 2018

and his conduct in the jail was also not good because he over-stayed the period of parole for two times in the years 2002 and 2006 respectively.

After notice, respondents have filed their reply in which it is mentioned that five cases were pending against the petitioner besides the case in which he is suffering sentence i.e. 1) **FIR No. 119 dated 01.05.2003** under Section 8/9 of the Parole Act, at Police Station City Panipat in which he was sentenced for 6 months rigorous imprisonment which has already been undergone by him; 2) **FIR No. 156/2003** under Section 392 IPC, at Police Bawana (Delhi) which is pending trial and he is on bail; 3) **FIR No. 303/1997**, under Section 379/411 IPC, P.S. Rai in which he has been acquitted; 4) **FIR No. 52/1996** under Section 25/54/59 Arms Act, P.S. Sadar Sonapat, in which he has been acquitted on 08.08.2005 and 5) **FIR No. 83/2003** under Section 392/420/468 IPC, P.S. Kalanaur, in which also he has been acquitted on 08.12.2010.

The petitioner had allegedly absconded from parole on 16.04.2003 for 2 months and 10 days and a case was registered against him vide FIR No. 119 dated 01.05.2003 in which he has already been convicted and sentenced for 6 months and suffered the said sentence. The other case was registered for overstaying the period of parole for one day on 24.04.2005. Besides this, there is no other case against the petitioner.

Learned counsel for the petitioner has submitted that persistent bad conduct is to be seen from the last 5 years from the date of his eligibility for being considered for premature release and in this regard he has referred to Clause 3 (i) of the said Policy. It is submitted that the period of 5 years is applicable to para 2 (a) to 2 (e) of the Policy.

CWP No. 11179 of 2018

It is submitted that the respondents have committed an error in considering the case of the petitioner under the parameters of Para 2 (a) (xiii) of the Policy.

I have heard learned counsel for the parties and after going through the aforesaid facts and circumstances, am of the considered opinion that there is merit in the submissions made by the learned counsel for the petitioner. The Policy dated 08.08.2000 is divided into various parts. Clause 2 (a) of the policy deals with the cases of convicts whose death sentence is commuted to life imprisonment and convicts who have been sentenced for life having committed heinous crime. The heinous crimes are mentioned in the policy from Clause 2 (a) (i) to (xvii). In such cases, for the purpose of seeking premature release, the period of 14 years' actual sentence and 20 years' sentence with remissions have to be spent in jail. Clause 2 (b) deals with the adult life convicts who have been sentenced for life but whose cases are not covered under Clause (a) and who have not committed the crime which is prescribed as heinous crime. Such convicts have to suffer 10 years' actual sentence and 14 years' sentence with remissions for the purpose of becoming eligible for seeking his/her premature release. Clause 2 (a) (xiii) says that the persistent bad conduct in the prison would be termed as heinous crime.

The question in this case would be as to whether the facts and circumstances of the case are such that the case of the petitioner can be held to be covered under Para 2 (a) (xiii) ?

After going through the facts and circumstances of the case, I am of the considered opinion that except for a case registered against the petitioner under Section 392 of IPC at P.S. Bawana (Delhi), the petitioner has

CWP No. 11179 of 2018

been acquitted in all the other cases and has overstayed the period of parole for two times. At one point of time, he had overstayed for only one day and in other case for overstaying the period of parole, he has already been sentenced for 6 months. Thus, in these facts and circumstances, the order passed by respondent No. 1 is patently erroneous and deserves to be revised. Therefore, the present petition is hereby allowed and direction is issued to respondent No. 1 to reconsider the case of the petitioner for grant of premature release in terms of Clause 2 (b) of the policy.

Needful shall be done within one month from the date of receipt of certified copy of this order.

September 4, 2018

Ess Kay

**(RAKESH KUMAR JAIN)
JUDGE**

Whether speaking / reasoned :

✓
Yes / No

Whether Reportable :

Yes / No