

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

SANJIV KUMAR SHARMA
10/11/2018 13:22
I attest to the accuracy and
authenticity of this document

CM-5958-CWP-2018,
CM-13114-CWP-2018,
CM-14846-CWP-2018 in/and
CWP-9950-2018 (O/M)
Date of decision : 22.11.2018

Jatinder Kumar alias Bawa

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Akshay Rana, Advocate,
for applicant-petitioner.

Ms. Sunint Kaur, AAG Punjab.

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KULDIP SINGH, J. (ORAL)

Petitioner Jatinder Kumar alias Bawa was convicted and sentenced by learned Sessions Judge, Ludhiana, on 8.5.2003 under Sections 302, 364 A, 201, 120 B IPC read with Section 34 IPC. He was sentenced to life imprisonment under Sections 302, 364 A IPC and was sentenced to various imprisonments under remaining sections. Petitioner has sought his premature release on the ground that as per policy dated 8.7.1991, framed by State of Punjab, he has undergone requisite sentence. Petitioner has also challenged impugned order dated 9.11.2015, passed by Joint Secretary, Home (B), Punjab and order dated 31.8.2017 (Annexure-P-6 and Annexure-P-7 respectively), passed by Joint Secretary, Home (B), Punjab Additional Chief Secretary, Justice and Home Affairs Department, Punjab, vide which his case for premature release was declined by respondents.

Reply of State was obtained.

I have heard learned counsel for petitioner, learned State

counsel and have also carefully gone through file.

As per policy of State of Punjab dated 8.7.1991(Annexure-P-1), case of petitioner falls in Category 'B', since offence for which he was convicted carries death sentence also. Therefore, as per policy of State, he was required to undergo actual sentence of 12 years and with remissions 18 years. As per impugned order dated 31.8.2017 (Annexure-P-7), petitioner has undergone actual sentence of 18 years, 1 month, 4 days and with remissions, 20 years, 29 days, as his offence was found to be heinous crime.

Perusal of impugned order dated 31.8.2017 (Annexure-P-7) shows that case of premature release of petitioner has been declined on the ground that in jail roll, submitted by Additional Director General of Police (Jails), conduct of petitioner has not been found satisfactory as he had overstayed parole for 93 days when he was released on parole from 4.11.2015 to 3.12.2015. He was tried under Section 9 of Punjab Good Conduct Prisoners (Temporary Release) Act, 1962, and was sentenced to undergo rigorous imprisonment for one month by learned Chief Judicial Magistrate, Bathinda.

The State has taken into consideration that as petitioner has committed jail offence 5 years prior to his eligibility for release, therefore, he is not entitled to premature release.

Impugned order Annexure-P-7 was passed on 31.8.2017 and earlier also, similar order was passed on 9.11.2015 (Annexure-P-6). Now, order dated 31.8.2017 (Annexure-P-7), which is latest order, is under challenge.

The question as to when conduct of a convict is found not satisfactory on account of jail offence as per policy framed by State Government, whether he is entitled to premature release, if otherwise

eligible, was considered by this Court in *Brahma Nand Versus State of Haryana and others*, 2015 (3) RCR (Criminal) 836, in which it was held that jail offence, if committed by a convict, his premature release case is to be considered without taking into consideration said jail offence. It is to be noted that for jail offence, petitioner has already been sentenced by appropriate Court. Therefore, for same offence, he cannot be punished twice by declining premature release on same ground. No other ground has been pressed on behalf of State.

It being so, impugned order dated 31.8.2017 (Annexure-P-7) is set aside. The State is directed to consider case of petitioner afresh for premature release, in view of observations made above and pass fresh order within one month from the date of receipt of certified copy of this order. If State fails to pass order within one month from date of receipt of certified copy of this order, petitioner shall be released on interim bail to satisfaction of District Magistrate concerned.

Petition is thus allowed.

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Since main case has been allowed, therefore, all applications become infructuous.

(KULDIP SINGH)
JUDGE

22.11.2018

sjks

Whether speaking order : Yes / No

Whether reportable : Yes / No