

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

1. **CWP-25818-2018 (O&M)**

Matloob Ahmed ... Petitioner

Versus

UT Chandigarh and others ... Respondents

2. **CWP-6964-2019 (O&M)**

Abdul Gaffar @ Guddu ... Petitioner

Versus

UT Chandigarh and others ... Respondents

Date of Decision:- 4.10.2019

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Hoshiar Singh Jaswal, Advocate
for the petitioner in CWP-25818-2018.

Mr. Chandan Singh Rana, Advocate
for the petitioner in CWP-6964-2019.

Mr. Lalit K.Gupta, Addl. P.P. U.T. Chandigarh.

Mr. Ankit Gupta, Advocate for respondent No. 4.

GURVINDER SINGH GILL, J.

1. This order shall dispose of the above mentioned two petitions filed on behalf of Abdul Gaffar @ Guddu and Matloob Ahmed seeking their premature release, being based on identical facts.

2. A few facts necessary to notice for disposal of the aforesaid petitions are that both the petitioners were tried for having committed offences punishable under Sections 302/392/411/34 IPC in respect of FIR No.75 dated 13.7.1997 registered at Police Station Sector-19, Chandigarh. The learned Sessions Judge, Chandigarh vide judgment dated 13.7.2000 held the accused guilty for having committed murder of three persons namely Smt. Pushpa Chadha, Smt. Uma Rani and Milli @ Geetika and sentenced them to undergo rigorous imprisonment for life for each of the aforesaid murders. The accused were also sentenced to undergo rigorous imprisonment for life in respect of offence under Section 460 IPC and to undergo rigorous imprisonment for 5 years for offence under Section 394 IPC. The sentences were, however, ordered to run concurrently. Although, the petitioners challenged their conviction by way of filing appeal in this Court, but the appeal was also dismissed.
3. As per custody certificate, petitioner Abdul Gaffar, as on date, has undergone actual imprisonment of 22 years and 2 months and after including remissions, he has undergone total sentence of 25 years and 6 days. As per custody certificate in respect of Matloob Ahmed, he has undergone actual imprisonment of 22 years 1 month and 28 days and after including remissions, he has undergone total sentence of 31 years and 13 days.
4. A life sentence means the actual life imprisonment for the entire life of the convict, as has been held by a Constitution Bench of Hon'ble the Supreme Court in Union of India Vs. Sriharan (2016) 7 SCC 1. The sentence of imprisonment for one's entire 'life' same may, however, be curtailed by the State Government by passing an order for his premature release. However,

such like discretion has to be exercised on the advice of the State Level Committee. The State Level Committee has to arrive at its decision while considering all the material aspects based on sound principles. If the Court finds that the said discretion has not been properly exercised with due application of mind, the Court may set aside the order rejecting the application seeking grant of premature release and may remit the case back for reconsideration. However, the Court would not, on its own, undertake the exercise of considering whether or not to grant premature release to a convict. Hon'ble the Supreme Court, in 2009(2) SCC 268 State of Haryana vs. Bhup Singh, set aside the order of High Court where High Court had directed pre-mature release of a convict, while accepting the contention of the Appellant/State that High Court can only direct the authority to consider the matter pertaining to pre-mature release but not *suo moto* order release of the convict.

5. The petitioner is undergoing sentence in respect of offences committed by him in U.T. Chandigarh. The Chandigarh Administration, vide gazette notification dated 2nd April, 1997 (Annexure P-4) had adopted Punjab Jail Manual, 1996 (Manual for Superintendence and Management of Jails in Punjab) for the purposes of considering premature release of prisoners. Section 431 of the Punjab Jail Manual deals with grant of premature release of the prisoners in terms of Article 161 of the Constitution of India vide which the Governor of a State is vested with powers to grant remissions of punishment or to commute his sentence. As per provisions of Section 431 of the Punjab Jail Manual-1996, a person undergoing life imprisonment for having been convicted for committing heinous crime, who has undergone 12

years of actual sentence and a total of 18 years of sentence including remissions would become entitled to be considered for his pre-mature release provided his case does not fall in the exceptions carved therein.

Section 431 of the Punjab Jail Manual, 1996 reads as follows:

431. Procedure under Article 161 of the Constitution and Sections 432, 433 and 433-A of Cr. PC 1973. –

- (1) (i) Minimum periods of imprisonment to be undergone for a convict before consideration of application for exercise of powers of the Government under Article 161 of the Constitution or sections 432, 433 and 433-A of Cr.P.C. 1973 are as under : -

Periods In Years

A	B	C	D	E
For convicts whose death sentence has been commuted to life 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 which 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 crime	Other life convicts

A		B		C		D		E	
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
1		2		3		4		5	
ADULTS :									
14	20	12	18	10	14	10	14	8 ½	14
FEMALES / MINORS :									
10	14	8	12	8	12	8	12	6	10

A. Heinous crimes with reference to column 'B' of 1 (i) 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 of 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 along with offence under the Untouchability (Offences) 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) Double murder and murder committed after conviction while inside the jail or on parole or on expiry of sentence shall be treated as heinous crime.
- (ix) Any conviction under Section 120-B of the IPC.

Heinous crime with reference to column 'D' of the revised policy are defined as follows :

- (1) Offence under Section 304(b) of the IPC, i.e. a dowry death.
- (2) Offence under Section 304 along with Section 347 of the IPC i.e. culpable homicide with wrongful confinement for extortion.
- (3) Offence under Section 304 with Section 375 i.e. culpable homicide with rape.
- (4) Offence under Section 304 along with offence under the Terrorist and Disruptive Activities (Prevention) Act, 1987.
- (5) 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.
- (6) Offence under Section 304 where the victim is a child under the age of 14 years.
- (7) Any conviction under Section 120-B of the IPC i.e. for criminal conspiracy in connection with the above crimes.

- B. I. Adults are defined as persons above the age of 18 years.
- II. The cases of premature release will only be considered provided the convict has maintained good conduct in jail. For this purpose good conduct means that he has not committed any jail offence for a period of 5 years prior to the date of his eligibility for consideration for release as per Para 1.1 above.
- III. Cases for premature release will only be considered if the Government is satisfied that in the event of release of the convict there is no likelihood of the convict committing a crime or breach of peace in any way connected with the circumstances of the crime for which he was originally convicted.
- IV. The Government reserves the right to exercise its powers under Article 161 of the Constitution in any way it deems fit.

2. Procedure to be followed :

- (i) On becoming eligible for consideration for premature release under Article 161 of the Constitution as per Para-1 of the Policy the convict must submit a petition to the Governor indicating the grounds on which he desires his case to be considered for premature release.

- (ii) The State Government shall refer the petition to the Inspector General of Prisons for preparing the case in the prescribed format for verification of details of imprisonment as well as for a report of good behaviour.
- (iii) A copy of the petition shall simultaneously be forwarded to the District Magistrate for verification of the contentions made in the petition and a report regarding the likelihood of commission of breach of peace or crime by the convict which is connected with the circumstances of the crime originally committed by him. For this purpose, *inter alia*, the following will be taken into account:
- (a) the behaviour of the convict during periods of parole.
 - (b) the views of the local panchayat.

The actual verification and report regarding likelihood of commission of breach of peace or crime shall be made personally by the concerned station house officer and report shall be sent under his signatures to the District S.P. (SSP). Further the District S.P. (SSP) shall forward it under his own signatures to the District Magistrate who shall further send it to the Government under his own signatures. These duties shall not be delegated by the District Magistrate and the District S.P. (SSP) and the S.H.C.

- (iv) On receipt of the report from the I.G. Prisons as well as the District Magistrate, the State Government will decide the petition in accordance with the policy laid down.

3. As regards the policy for dealing with premature release under Sections 432 and 433, this will be identical to the policy proposed for deciding cases under Article 161 of the Constitution, with the following difference :

The minimum period of actual imprisonment to be undergone before a case for premature release is considered will be as follows :

For convicts whose death sentence has been commuted to life 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 which 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 crime		Other life convicts	
A		B		C		D		E	
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
1		2		3		4		5	
ADULTS :									
14	20	14	20	14	20	10	14	8 ½	14
FEMALES / MINORS :									
14	20	14	20	14	20	8	12	6	10

As regards procedure it would not be necessary for the convict to submit his petition on completion of the required number of years of actual imprisonment. The IG Prisons would send the case of the concerned convict to Government on or after the eligibility date which would then obtain the report of the District Magistrate and take appropriate decision.

As regards the prisoners convicted before 18.12.1978.

- (a) Their cases will be considered in the light of the policy framed by the Govt, in 1971 (10.11.1971) and 1976 (30.1.1976) in respect of premature release cases.
- (b) The cases of lifer prisoners convicted after 18.12.1978 will be governed by the policy adopted by the Govt. 12.12.1985.

6. The case of the petitioner Abdul Gaffar for his premature release was considered by the authorities concerned and was rejected vide impugned order dated 22.1.2018 (Annexure P-6). Similarly, the case of the petitioner Matloob Ahmed was also considered for premature release but was rejected vide order dated 7.2.2018 (Annexure P-6).
7. The case for premature release of a convict is required to be considered under various parameters and the State Government may choose not to extend the benefit of premature release in case it is found that there is any likelihood of the convict committing a crime or breach of peace in any way connected with the circumstances of the crime for which he was originally convicted. It specifically provided in Section 431 of Punjab Jail Manual, 1996 that the Government reserves the right to exercise its powers under Article 161 of Constitution of India.
8. A perusal of impugned order dated 22.1.2018 (Annexure P-6) in case of Abdul Gaffar would show that his case for pre-mature release has been rejected mainly on the ground that he is a habitual offender and would cause danger and terror to society. Similarly, in case of Matloob Ahmed, a perusal of impugned order dated 7.2.2018 (Annexure P-6) would show that his case has been rejected on the ground that he had committed a heinous offence and his release could prove dangerous to society. However, the impugned orders

do not reflect as to on what basis the said opinion of the petitioners, being habitual offender or being dangerous to society, has been formed. Since it has been more than 1-1/2 years since rejection of their cases for premature release and there could be some change in circumstances during the said period, therefore, without commenting anything on merits of the case, the petitions are disposed of with a direction to the authorities concerned to process the cases afresh. The Superintendent, Model Jail, Chandigarh is directed to process the cases of the petitioners afresh and to put up the same before the authorities concerned for their premature release on the basis of latest report to be obtained from the quarters concerned. The authorities concerned shall dispose of the same expeditiously, preferably within 3 months from the date the matter is put up before it without being influenced by the orders passed earlier in the matter of their premature release.

9. The petitions stands disposed of accordingly.

4.10.2019

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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No