

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

CWP-7122-2018 (O&M)
Date of decision : 29.10.2019

Dilbagh Singh

.....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Suram Singh Rana, Advocate for the petitioner.

Ms. Rashmi Attri, AAG, Punjab.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court seeking issuance of direction to respondent-State to consider his case for grant of premature release in terms of policy dated 8.7.1991 (Annexure P-1) issued by the State of Punjab.
2. The petitioner Dilbagh Singh along with three other co-accused was tried by the Court of Additional District Judge, Amritsar in respect of FIR No.78 of 2005, Police Station Patti, District Amritsar wherein he was found guilty for having committed offences punishable under Section 302/120-B IPC and was sentenced to undergo rigorous imprisonment for life vide judgment dated 3.6.2006. The petitioner challenged the aforesaid judgment by way of filing an appeal in this Court i.e. CRA-D-484-DB of 2006 which was also dismissed on 1.12.2012.

3. It is the case of the petitioner that since he has undergone an actual sentence of 12 years 10 months and has also earned remissions and that by including remissions, he has undergone a total sentence of 18 years, therefore, he was entitled to be released in view of the policy dated 8.7.1991 of Government of Punjab, pertaining to premature release of life convicts.
4. The respondents, while opposing the petition, have filed reply by way of affidavit of Deputy Superintendent, Central Jail, Amritsar wherein a stand has been taken that period of his actual imprisonment is 12 years and 13 days as on 26.9.2018 and that the total sentence including remissions works out to 14 years 7 months and 27 days and in these circumstances, as on date, he is not covered under policy dated 8.7.1991 as he has not completed the total imprisonment period of 18 years including remissions although his actual undergone period is more than 12 years.
5. It may here be mentioned that a separate reply by way of affidavit of Deputy Inspector General of Prisons, Punjab was also filed on behalf of respondent No. 2 wherein a stand has been taken that as per policy dated 8.7.1991, if a prisoner has committed murder of a child aged less than 14 years, then his case for premature release would be considered in terms of Para 1.1 clause (b) under "heinous crime" category of the said policy and consequently, the prisoner is required to undergo imprisonment for an actual sentence of 12 years and a total of 18 years including remissions.
6. It has further been stated therein that the petitioner cannot claim any benefit of the government remissions issued from the year 2006 to 2017 (Annexure R-2), having committed murder of a child below 14 years, as

the circulars issued during the years 2006 to 2017 contained a specific provision for exclusion of the said category of prisoners who had committed murder of a child below 14 years in age. A perusal of Annexure R-2 shows that the same is a compilation of the following circulars :-

Sr. No.	Date of Circular	Event	Period of remission
1.	15.6.2006	400 th Martyrdom Day of Shri Guru Arjun Dev Ji	1 year
2.	11.4.2007	Baisakhi Festival	3 months to 1 year
3.	29.8.2008	Guru Gaddi Divas	3 months to 1 year
4.	1.6.2010	300 years of Sarhind Fateh Diwas of Baba Banda Singh Bahadur	2 months to 1 year
5.	11.4.2011	Baisakhi Festival	2 months to 1 year
6.	12.4.2012	Baisakhi Festival	2 months to 1 year
7.	14.8.2013	Independence Day	2 months to 1 year
8.	13.8.2014	Independence Day	1 month to 1 year
9.	14.8.2015	Independence Day	1 month to 1 year
10.	11.8.2016	Independence Day	1 month to 1 year
11.	14.8.2017	Independence Day	1 month to 1 year

7. A perusal of the aforesaid circulars shows that while the Government of Punjab had granted remissions to convicts during the aforesaid years ranging from 1 month to 1 year, but certain exceptions have been carved out in the said circulars in respect of certain categories of convicts who have not been extended the benefits of said remissions. The convicts who have been found guilty of having murdered a victim aged less than 14 years is one such exception, which is found in all the aforesaid circulars.
8. In view of the 'exception' clause, which is found in all the aforesaid circulars, the petitioner who had murdered a child aged less than 14 years would not be entitled to claim remissions on the strength of the aforesaid

circulars. During the course of arguments, the learned counsel for the petitioner placed reliance upon judgment dated 24.7.2003 passed in CRM No.30109-M of 2002 Mahender Singh and others vs. State of haryana and others wherein it had been held that the classification of persons who had committed one murder or more than two murders for the purpose of premature release was not reasonable and that the same was discriminatory and violative of Articles 14, 19 and 20 of the Constitution of India. The learned counsel, while relying upon the aforesaid judgment has submitted that in view of the ratio of the above cited judgment, no distinction could be drawn in the matter considering the case of convicts who stand convicted for murder of an adult or of a child less than 14 years.

9. I am afraid this Court cannot subscribe with the aforesaid view especially since the State of Haryana challenged the aforesaid judgment in the Hon'ble Supreme Court and the Hon'ble Supreme Court vide its judgment reported as 2017(13) SCC 606 State of Haryana vs. Mahender Singh and others, while disagreeing with the judgment of this Court, held that the State was competent to make a reasonable classification which does not offend Article 14 of the Constitution of India. The relevant extract reads as follows :-

“36.We are, therefore, of the opinion that the High Court might not be correct in holding that the State has no power to make any classification at all. A classification validly made would not offend Article 14 of the Constitution of India. We, thus, although do not agree with all the reasonings of the High Court, sustain the judgment for the reasons stated hereinbefore.”

10. It will not be out of place to refer to a Division Bench judgment of this Court reported as 1992(1) RCR Criminal 467 Jalandhar Singh vs. State of Punjab and another wherein also it has been held that classification of convicts on the basis of different considerations including heinous nature of crime or gravity of offence is permissible. The relevant extract from the said judgment reads as follows:-

“13.We are also of the view that all convicts cannot be classified as one homogeneous class. They can be classified on the basis of different considerations. Heinousness or gravity of the offence committed by a convict can be one of the basis for classification. Billa and Ranga can in a given situation be treated as a class apart from an ordinary convict who may have committed murder in an entirely different situation. While it may not be open to the executive to make the classification on the basis of wholly arbitrary or extraneous criteria, we entertain no doubt that in principle the classification can be founded on the gravity of the offence. Mr. Jindal has referred to the various provisions of the Punjab Jail Manual to contend that the convicts have been classified by a uniform criteria and their further classification on the basis of the supposed heinous of the crime would be unfair and inequitable. In our view the provisions of the Jail Manual are merely guidelines which can be taken into consideration by the Governor while passing orders under Articles 161 of the Constitution. These do not preclude the Governor from taking into consideration factors like heinousness of the crime.

14.In view of the above, we answer the question posed at the threshold in the negative and hold that the heinousness of

the crime is not extraneous to the grant of pardon or premature release.”

11. During the course of arguments, the learned counsel for the petitioner also pressed into service a judgment of this Court reported as 1997 (2) RCR (Criminal) 413 Surinder Kumar @ Chhinda vs. State of Haryana to contend that a convict cannot be denied the benefit of premature release only on the ground that he has not earned remissions and that in case a convict has undergone the required period of actual sentence which is 14 years in the present case, he is entitled to be released.
12. I have considered the aforesaid submission and have also perused the cited judgment. In the cited judgment, a convict was convicted around the year 1983 and his case for premature release was declined in the year 1992 mainly on the ground that he had committed various jail offences from time to time from 1983 onwards and secondly in view of heinous nature of crime. The said judgment i.e. Surinder Kumar's case (supra) was cited in another case at a later stage in a case reported as 1999 (1) RCR (Criminal) 617 Satvir Singh vs. State of Haryana and was not relied upon by observing that the judgment rendered in Surinder Kumar's case was delivered while interpreting a different set of instructions whereas it was instructions dated 4.2.1993 which were applicable in Satvir Singh's case. By the same reasoning, the judgment rendered in Surinder Kumar's case would not be applicable as in the present case it is instructions dated 8.7.1991 issued by the State of Punjab which are applicable.
13. No other point has been raised or urged before this Court. In view of the discussion made above and while bearing in mind that it is a case where

the petitioner had murdered a child aged less than 14 years and that his case would fall in the category of “heinous crime”, as defined in Para 1.1(A)(vii) of policy dated 8.7.1991, the petitioner is required to undergo an actual sentence of 12 years and a total sentence of 18 years including remissions so as to be eligible for being considered for his premature release. Since the petitioner has not undergone the requisite total sentence of 18 years including remissions, therefore, no direction for his premature release can be issued by this Court at this stage. The petition, as such, is dismissed. However, as and when the petitioner fulfills the requisite conditions regarding the “undergone” period of 12 years actual sentence and 18 years of total imprisonment, the authorities shall consider his case for his premature release in accordance with law.

14. The petition stands dismissed.

29.10.2019

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No