

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

CRWP-1593-2019 (O&M)

Date of Decision:- 20.12.2019

Pawan

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Vijay K. Jindal, Advocate for the petitioner.

Ms. Aditi Girdhar, Assistant Advocate General, Haryana.

GURVINDER SINGH GILL, J.

1. The petitioner Pawan is presently undergoing sentence, having been convicted vide judgment dated 20.2.2006, passed by Sessions Judge, Jhajjar holding him guilty of having committed offence punishable under Section 302 IPC read with Section 34 IPC. The appeal filed by the petitioner i.e. CRA-D-357-DB of 2006 also stands dismissed vide judgment dated 30.10.2012.
2. The petitioner, aggrieved by order dated 8.3.2019 (Annexure P-4) declining his case for premature release has approached this Court seeking setting aside of aforesaid order and for issuance of a direction to authorities concerned for considering his case for premature release in terms of Para 2(b) of policy dated 12.4.2002 (Annexure P-3) of State of Haryana.

3. The case of the petitioner had initially been considered for his premature release by the State Government but was declined vide order dated 25.4.2018 (Annexure P-8). The relevant extract from the said order reads as follows :-

“2.The date of conviction of the convict is 27.02.2006, so, the policy of premature release dated 12.04.2002 is applicable in this case. His case is covered under Para 2(a)(xi) (Persistent bad conduct in the prison) as well as 2(a)(xii) (convicts who cannot for some definite reasons be prematurely released without danger to public safety) of the policy dated 12.04.2002. The life convict has committed many crimes of parole Act, Arms Act, attempt to murder, murder during conviction and his conduct in the jail also remained persistently bad. The convict also remained overstayed from parole for long period of 03 years 07 months and 17 days. Six different FIRs' were got registered against him in the year 2006 to 2014.

3. This life convict has completed 11 years 01 month and 26 days actual sentence including under trial period and 14 years total sentence including remissions after deducting parole period. The convict has not completed his requisite 14 years actual sentence and 20 years total sentence as per the policy dated 12.04.2002 and does not qualify for premature release at this stage.”

4. Aggrieved by the aforesaid order dated 25.4.2018 (Annexure P-8), the petitioner challenged the same by way of filing CWP No.19130 of 2018 which was accepted vide judgment dated 3.12.2018 (Annexure P-9) and the aforesaid order dated 25.4.2018 (Annexure P-8) was set aside and a direction was issued to the State Government to consider the matter afresh.

The operative portion of judgment dated 3.12.2018 reads as follows :-

“I am of view that for violating parole period and becoming abscond, petitioner has been convicted as required under the law. Therefore, he cannot be punished twice for same offence. In FIR No. 423, dated 20.11.2006, i.e. after present FIR, he was sentenced to undergo rigorous imprisonment for 5 years under Section 307 IPC. It goes to show that though conduct of petitioner in jumping parole was a bad, but it was not a persistent bad conduct. Therefore, Clause 2 (a) (xi) of policy of State Government dated 12.4.2002 (Annexure-P-3) does not apply. Regarding Clause 2 (a) (xii) of policy of State Government dated 12.4.2002 (Annexure-P-3), no reason has been given that if he is prematurely release, there will be danger to public safety.

As already noticed above, except FIR under Section 307 IPC, in which he has been convicted, other cases are under Parole Act and for becoming proclaimed offender. However, in 2 of cases under Sections 307 and 302 IPC, he has been acquitted. Therefore, these cannot be used against him.

In view of matter, it cannot be said that if petitioner is prematurely released, he will be danger to public safety. It being so, impugned order dated 25/30.4.2018 (Annexure-P-4), passed by Additional Chief Secretary to Government Haryana, Jails Department, is hereby set aside. State is directed to reconsider case of petitioner in the light of above observations and pass fresh orders, within six weeks, from the date of receipt of certified copy of this order. Petition is thus allowed.”

5. Pursuant to order dated 3.12.2018, the case of the petitioner for his premature release has been considered afresh but has been rejected vide impugned order dated 8.3.2019 (Annexure P-4).

6. The learned counsel for the petitioner has submitted that once this Court while setting aside order dated 25.4.2018 (Annexure P-8) had held that the earlier cases in which the petitioner already stands convicted cannot be taken into account and nor can the factum of his jumping parole be considered, the case of the petitioner for his premature release ought to have been considered again but shorn off the aforesaid facts and that the impugned order having been passed on those very grounds which were the basis of the earlier order 25.4.2018 (Annexure P-8) cannot sustain. The learned counsel has further submitted that in the absence of any substantial material to hold that the release of the petitioner was likely to endanger public safety, his case for premature release could not have been declined. The learned counsel has further submitted that in any case while assessing the case of the petitioner, his conduct beyond last 5 years cannot be taken into account and since the period of absence of the petitioner after overstaying parole is beyond the last 5 years and so are the offences alleged to have been committed by him in respect of FIR No. 875/2006 P.S. Sadar Gurugram, FIR No. 423 dated 20.11.2006 P.S. Jhajjar and FIR No. 982/2006 P.S. City Gurugram, the same cannot be taken into account.
7. Opposing the petition, the learned State counsel has submitted that the State has already preferred LPA challenging judgment dated 3.12.2018 (Annexure P-9) and that in these circumstances, the petitioner cannot avail any advantage from the said judgment dated 3.12.2018 (Annexure P-9) since the said judgment had not attained finality. The learned State counsel has further submitted that the case of the petitioner is covered under Para 2(a) (xi) and Para 2(a)(xii) of policy dated 12.4.2002 (Annexure P-3), being a

convict having persistent bad conduct and being a convict whose release is likely to endanger public safety, and thus he would be entitled to be considered for premature release on completion of 14 years of actual sentence and 20 years of total sentence including remissions.

8. I have considered rival submissions addressed before this Court.
9. The controversy in the present case is as to whether the petitioner is entitled to be considered for his premature release upon completion of an actual sentence of 10 years and a total sentence of 14 years including remissions or as to whether his case would fall under Para 2(a)(xi) and Para 2(a)(xii) so as to entitle him for consideration for premature release only after completion of 14 years of actual sentence and 20 years of total sentence including remissions. A perusal of Para 4 of policy dated 12.4.2002 (Annexure P-3) would show that while submitting the case of a convict for his premature release, the Superintendent of Jail is required to keep in view his overall conduct during the last 5 years. The said para 4 reads as follows :-

“The Superintendent of the Jails concerned shall submit premature release cases of life convicts two months before they complete the sentence mentioned above alongwith their comments to the Director General of Prisons, Haryana keeping in view the following points :-

- i) Overall conduct of the life convicts during his/her confinement in the jail with specific emphasis, however, on his conduct for the last five years from the date of his/her eligibility for consideration of premature release under para 2(aa) to 2(a) may be termed as under :-

- a) If he/she has not been punished for Good
any jail offence, during the last five years.

- b) If he/she has been punished with a minor Satisfactory punishment during the last five years.
- c) If he/she has been punished with a Not-Satisfactory major punishment during the last five years.”

10. The aforesaid extract from the policy does show that while assessing overall conduct of a convict during his confinement in jail, special emphasis is to be placed on his conduct during the last 5 years. In the present case, all the following six FIRs lodged against the petitioner were lodged beyond a period of 6 years from the date the impugned order was passed:-

- i) FIR No.423 dated 20.11.2006 under Section 307 IPC P.S. Jhajjar
- ii) FIR No.450 dated 09.12.2006 under Section 8/9 Parole Act, P.S. Jhajjar
- iii) FIR No.875/2006 under Sections 302/201/342/148/149/120-B IPC & Sections 25/54/59 of Arms Act, P.S. Sadar Gurugram.
- iv) FIR No.982/2006 under Sections 307/120-B IPC and under Sections 25/54/59 of Arms Act, P.S. City Gurugram.
- v) FIR No. 193 dated 18.4.2010 under Section 174-A IPC, P.S. Jhajjar.
- vi) FIR No. 539 dated 25.9.2012 under Section 174-A IPC, P.S. Jhajjar.

11. The petitioner stands convicted in the FIRs mentioned at serial no. (i) and (ii) above whereas he has been acquitted in the FIRs at serial no. (iii) and (iv). The FIRs at serial no. (v) and (vi) pertain to the the instances when the petitioner had been declared proclaimed offender by the Courts concerned.

12. The FIR at serial no. (i) pertains to an offence under section 307 IPC which had been committed by the petitioner while he was availing parole and in fact had overstayed the parole and remained absconding for a period of 3 years 7 months and 17 days. Such like act on part of the petitioner would certainly reflect on his conduct and reveal his tendencies.
13. There is no embargo for considering conduct of a convict outside the jail. The only guideline as contained in paragraph 4 of policy dated 12.4.2002(Annexure P-3) is that a special emphasis is to be placed on conduct of convict during last 5 years of confinement when his overall conduct during confinement in jail is to be examined by the Superintendent of Jail while submitting his case for pre-mature release. The relevant extract reads as follows:

“ The Superintendent of Jails concerned shall submit pre-mature release cases of life convicts two months before they complete the sentence mentioned above along with their comments to Director General of Prisons, Haryana , keeping in view the following points:

- (i) **Overall conduct** of life convict **during his/her confinement** in the jail with **special emphasis**, however, on his conduct for the **last 5 years** from the date of his/her eligibility for consideration of premature release under para 2(aa) to 2(a), may be termed as under :
 ”

(emphasis supplied)

14. In other words, the minor misconduct on part of convict while being confined in jail, beyond the last 5 years of confinement, may be overlooked,

if otherwise his conduct has been consistently good. However the factum of commission of an offence outside the jail, inviting serious penal consequences, particularly when a convict has been released on interim bail or parole or furlough or otherwise, is certainly required to be considered and borne in mind as the same reflects on the conduct of the convict and would give a peep into his psyche and tendencies which can be taken into account to form an opinion as to whether his release is likely to endanger public safety or not.

15. The fact that the petitioner jumped parole and committed offence as he serious as an offence under section 307 IPC would always reflect on his credentials and such like conduct cannot be said to have been washed off with efflux of time. The release of a convict prematurely is a discretion to be exercised by the State authorities keeping in view various factors and parameters and a convict cannot claim any absolute right for his premature release.
16. Consequently this Court does not find any infirmity in the impugned order dated 8.3.2019(Annexure P-4) whereby the authorities concerned while taking into account the aforesaid conduct of the petitioner in having jumped parole and having remained absconding thereafter for a long time and also having committed offences including offence in the nature of 307 IPC, have declined the case of the petitioner for his premature release at this stage.
17. The petition, as such is dismissed. However, it is clarified that the aforesaid dismissal is not to be construed as an absolute embargo for considering his

case afresh for premature release at a later stage as and when he is covered under the policy for pre-mature release, as applicable to the petitioner.

20.12.2019

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No