

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

CWP-23661-2018 (O&M)
Date of decision : 29.10.2019

Vakil Raj @ Raja

.....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Gaurav Singla, Advocate for
Mr. Sanjiv Gupta, Advocate for the petitioner.

Ms. Aditi Girdhar, Assistant Advocate General, Haryana.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court seeking issuance of direction for his premature release in terms of policy of State of Haryana, having undergone fourteen years of sentence.
2. The petitioner stands convicted vide judgment dated 26.2.2005 passed by Additional Sessions Judge, Jind in respect of FIR No.51 dated 11.4.2002, Police Station Alewa District Jind wherein vide order dated 1.3.2005, he was sentenced to undergo imprisonment for life and to pay a fine of ₹5,000/- for having committed offence under Section 302 IPC.
3. It is the case of the petitioner that during the course of trial of FIR No.51 dated 11.4.2002, he was released on interim bail on medical grounds and that while he was on interim bail, he was implicated in another case i.e.

FIR No.84 dated 25.7.2003 under Sections 302/307/34 IPC, Police Station Alewa District Jind and after trial of the said case, he was found guilty by the Court of learned Additional Sessions Judge, Jind vide judgment dated 24.9.2005 and sentenced to undergo imprisonment for life and against which SLP is pending in the Supreme Court.

4. The learned counsel for the petitioner has submitted that since the petitioner has already undergone an actual sentence of about 16 years and has also earned remissions to the tune of about 4 years, he is entitled to be released in view of policy of State of Haryana.
5. Upon notice of motion having been issued, the State has filed its reply wherein specific stand has been taken that the case of the petitioner for premature release is to be considered in light of policy dated 12.4.2002 (Annexure R-1) and that as per Para 2(aa)(iv) of the policy, the case of the petitioner for his premature release can only be considered upon completion of 20 years of actual sentence and upon completion of 25 years of total sentence including remissions as the petitioner stands convicted for murder for the second time.
6. I have considered rival submissions addressed before this Court. It is an admitted fact that the petitioner was sentenced to undergo rigorous imprisonment for life vide order dated 1.3.2005 passed in pursuance of judgment dated 26.2.2005 in a trial arising out of FIR No.51 dated 11.4.2002 registered at Police Station Alewa District Jind . It is also an admitted fact that the petitioner also stands convicted for having committed another murder vide judgment dated 24.9.2005 in respect of FIR No.84 dated 25.7.2003 under Sections 302/307/34 IPC, Police

Station Alewa, District Jind wherein also he has been sentenced to under rigorous imprisonment for life.

7. The case of the petitioner would be covered by the policy dated 12.4.2002 of State of Haryana since it was, thereafter, in the year 2005 that the petitioner was convicted. The relevant extract from the said policy dated 12.4.2002 (Annexure R-1) reads as follows :-

“Reference your memo No.29896-GI/G-3 dated 29.10.2001 on the subject noted above.

2. In supersession of Haryana Govt. memo no.36/135/91-1JJ(II) dated 08.08.2000 which was further substituted bearing same no. and date on 23.02.2001, the Govt. have decided to revise the policy regarding, premature release of life convicts as follows :-

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| <p>(aa) Convicts whose death sentence has been commuted to life imprisonment and convicts who have been imprisoned for life having committed a heinous crime such as :-</p> <p>(i) Murder after rape repeated/chained rape/unnatural offences</p> <p>(ii) Murder with intention for the ransom.</p> <p>(iii) Murder of more than two persons.</p> <p>(iv) Persons convicted for second time for murder</p> <p>(v) Sedition with murder.</p> | <p>Their cases may be considered after completion of 20 yrs. actual sentence and 25 years total sentence with remissions.</p> |
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8. The learned counsel for the petitioner has, however, submitted that the aforesaid policy tends to distinguish between convicts who have been awarded same punishment for murder on the basis of other offences

committed by them or the manner of commission of offence which is discriminatory and arbitrary.

9. I have considered aforesaid submission. Hon'ble Supreme Court vide its judgment reported as 2017(13) SCC 606 State of Haryana vs. Mahender Singh and others. 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.

11. The ratio of above cited judgments leaves no manner of doubt that classification of convicts for considering their cases for premature release can be made on the basis of heinousness of crime is permissible.
12. Since the present case is a case where the petitioner has committed murder for the second time, his case would fall in category of convicts defined in Para 2 (aa)(iv) of policy dated 12.4.2002 (Annexure R-1), as per which he would be entitled to be considered only after having completed 20 years of actual sentence and 25 years of total sentence including remissions. As per reply dated 13.1.2017, filed by respondents No. 1 to 3 by way of affidavit of Superintendent, District Jail, Sonapat, the petitioner had undergone an actual sentence of 14 years, 4 Months & 13 days and a total of 18 years, 1 month & 17 days. Thus, even as on date, the undergone period would be less than the period prescribed in Para 2(aa)(iv) of policy dated 12.4.2002 (Annexure R-1) and as such, the

petitioner is not covered under the policy for pre-mature release as of now. Consequently, no direction for his premature release can be issued at this stage. However, as and when the case of the petitioner is found to be covered under the policy applicable to the case of the petitioner, the State shall process his case for being considered by appropriate authorities for his premature release.

29.10.2019

kamal

(Gurvinder Singh Gill)

Judge

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