

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

**CRWP-211-2020
Date of decision: 25.08.2021**

Bahadur Singh

...Petitioner

Versus

State of Punjab and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

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

Mr. H. S. Multani, AAG, Punjab.

(Through Video Conferencing)

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for issuance of writ in the nature of mandamus/certiorari declaring that the petitioner has undergone the sentence awarded to him and his further detention in the jail is illegal.

Brief facts of the case are that the petitioner faced the trial in FIR No.0066 dated 01.08.1997 at Police Station Sadar Mansa under Section 15 of the NDPS Act, 1985 and was sentenced to undergo rigorous imprisonment for a period of 12 years and to pay a fine of Rs.1,50,000/- and in default of payment of fine, the petitioner was further awarded rigorous imprisonment for a period of 03 years.

The appeal filed by the petitioner i.e. Criminal Appeal D-615-DB of 2000 was dismissed by this Court. The petitioner is currently undergoing his sentence in District Jail, Barnala.

Learned counsel for the petitioner submits that out of 12 years of sentence the petitioner has already undergone more than 11 years of

actual sentence and he is entitled to certain remissions which make him entitled for release, however, the State has not granted him the remissions which he is entitled to and therefore, the petitioner is continuing to serve his sentence.

Learned counsel for the petitioner has referred to the following circulars issued by the State of Punjab from time to time according to which the petitioner is entitled to remissions and has made the following submissions-

“(i) On 8th April, 1999 when he was in actual custody, Punjab Govt. issued notification in exercise of their powers conferred under Article 161 of the Constitution to commemorate the tercentenary celebration on the birth of Khalsa on 14.04.1999, the Governor of Punjab granted one year special remissions to prisoners who have been convicted by the courts of Criminal Jurisdiction in the State of Punjab and confined in Jails on or before 14.04.1999. These remissions were subject to various conditions mentioned in the circular. These remissions were further not applicable in the case of various offences, however, there was no bar for the offence under the NDPS Act. Petitioner fulfil all conditions mentioned in P-2 for claiming 1 year remissions. Thus, petitioner is entitled to one year remission. Copy of the circular dated 08th April, 1999 is Annexure P-2.

(ii) On 13th April, 2001, Punjab Govt. issued circular to commemorate the vi centenary celebration of the coronation of Maharaja Ranjit Singh. This circular was identical with the circular, copy of Annexure P-2. Copy of the circular dated 13.04.2001 is Annexure P-3. Petitioner was on bail granted by Hon’ble High Court on 13.04.2001 because Appeal against conviction was pending.

(iii) On 14th August, 2002, Punjab Govt. issued circular on the occasion of Independence Day. The other terms and conditions mentioned in the circular were almost identical to circular Annexure P-2 & P-3. Copy of this circular is Annexure P-4. On 14.08.2002, petitioner was on bail under orders of this Hon’ble Court.

(iv) On 14.08.2003, Punjab Govt. granted remissions under Article 161 of the Constitution on the occasion of Independence Day. The conditions mentioned in this circular were again the same as provided in the earlier circulars.

There was no bar for the NDPS convicts. The terms and conditions of this circular are annexed as Annexure P-5. Again petitioner was on bail on 14.08.2003 under orders of this Hon'ble Court.

(v) On 21st September, 2004, Punjab Govt. issued circular granting remissions on the occasion of 400th Anniversary of the installation of Shri Guru Granth Sahib. Copy of the circular is Annexure P-6. All other conditions were identical. On 21.09.2004, petitioner was on bail

(vi) On 09.11.2005, Punjab Govt. issued circular on the occasion of Birthday of Shri Guru Nanak Devi ji and granted one year Special remission. All other conditions mentioned in the circular were identical. Copy is Annexure P-7. Petitioner was on bail on 09.11.2005.”

Learned counsel for the petitioner further submits that as per the affidavit of the Superintendent, District Jail, Barnala, it is stated in para 2 that the petitioner was initially lodged in Central Jail, Bathinda from 01.08.1997 to 08.11.1998 as an under trial and then lodged as convict from 09.11.1998 to 08.07.2000. It is further stated that petitioner was given the benefit of Governor Policy of remission of 08.04.1999 and 11.05.2000 as he was in jail during the said period. It is further stated that since the petitioner was granted bail by this Court from 09.07.2000 to 08.01.2012 and therefore, he cannot be granted the benefit of remissions of the Policies of the Governor of year 2001 to 2006 as he was on bail, as the policy lay down a condition that a person who is confined in jail can only avail the remissions.

Learned counsel for the petitioner has referred to the judgment of the Hon'ble Supreme Court in ***Nalamolu Appala Swamy and Others versus State of Andhra Pradesh 1990 SCC(Cri) 44***, wherein, while dealing with the point whether a Government order is applicable qua grant of remission to a person who is on bail, it is held as under:-

6. We do not feel called upon to go into the question whether the appellants would fall under clause (a) or clause (b) of para 2 of the GO as it is for the State Government to

interpret the GO and decide the matter. We are confining our order to the limited question whether the ground set out in the counter-affidavit for denying remission to the appellants under the GO viz. that they were not in jail but were on bail at the time the GO is a tenable one.

7. We therefore direct the State Government to consider the matter afresh without reference to the fact that the appellants were not in jail on the date the GO was issued.

Learned counsel for the petitioner further submits that this judgment was followed in another judgment by the Hon'ble Supreme Court in ***D. Ethiraj versus Secretary to Govt. and Others 2011(4) R.C.R. (Criminal) 720.*** The operative part of the observation of the Hon'ble Supreme Court read as under:

“18. We are in entire agreement with the aforesaid views taken by this Court that if it is clear from the facts of a given case that during the period the petitioner was on bail and had not at all suffered any imprisonment, he cannot get the benefit of remission in respect of that period.

19. The same is admittedly not the position in this case. Here, the appellant had suffered substantial portion of the period in jail which is more than 17 months. On this, there is no dispute. In that view of the matter, the appellant's case is covered by the ratio of the three Judge Bench decision of this Court in Nalamolu Appala Swamy (supra).

20. We are unable to approve the reasoning given by the High Court that the appellant's case for remission cannot be considered in terms of the said notification as on the date of the notification, he was on bail. This is a wrong approach. A prisoner may be on bail on a particular day this is just a fortuitous circumstance. What the Court has to consider is the actual period of sentence undergone by the prisoner and whether by reason of the period actually undergone, the prisoner qualifies for remission. We are, therefore, constrained to set aside the judgment of the High Court.”

Learned counsel for the petitioner further submits that this Court has also followed the aforesaid judgment in ***Sudhir Kumar versus State of Punjab and another passed in CRWP No.1169 of 2013 (O&M).***

Learned State counsel submits that since the petitioner was on

bail, as per the policy of the State dated 13.04.2001, the petitioner cannot be granted the remissions as he was on bail. It is further submitted that the total sentence including the remission comes out to be 10 years 09 months and 24 days as on 30.01.2020.

After hearing learned counsel for the parties, considering the facts and circumstances of the case, I find merit in the present petition, in view of the judgments of Hon'ble Supreme Court in Nalamolu Appala Swamy (Supra) and D. Ethiraj (Supra), that the State cannot deny the benefit of remissions to the petitioner as per policies for the period he remained on bail.

Accordingly, the present petition is allowed.

The respondent No.1-Home Secretary, Punjab Government is directed to pass afresh order within a period of three weeks from today and to release the petitioner forthwith, if he qualifies for the remissions in accordance with the judgments of Hon'ble Supreme Court.

Disposed of.

25.08.2021

Chetan Thakur

**(ARVIND SINGH SANGWAN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No