

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

CRWP-370-2020
Date of Decision:-01.09.2021.

Yash Pal

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. S.S. Rana, Advocate for the petitioner.

Mr. P.S. Walia, AAG, Punjab.

(Through Video Conferencing)

VIKAS BAHL, J. (Oral)

This is a criminal writ petition under Article 226 of the Constitution of India praying for appropriate order or direction directing the respondents to release the petitioner forthwith prematurely on usual terms and conditions as per Government Instructions dated 08.07.1991 (Annexure P-1) with a further prayer for quashing the order dated 09.10.2019 (Annexure P-2) passed by the Principal Secretary, Punjab Government, Jail Department, being illegal and against law. A further prayer has been made that during the pendency of the case for re-consideration before the Authorities, the petitioner be released on interim bail/parole.

The petitioner was an accused in FIR No.200 dated 17.10.2001

and was convicted and sentenced to undergo rigorous imprisonment for life by the Additional Sessions Judge, Jalandhar, under Sections 302/149 IPC and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months and further under Section 307/149 IPC, he was convicted and sentenced to undergo rigorous imprisonment for 05 years and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo rigorous imprisonment for 03 months. Further under Section 324/149 IPC to undergo rigorous imprisonment for 06 months and under Section 323 IPC to undergo rigorous imprisonment for 01 year and all the sentences were made to run concurrently. The said judgment of conviction was passed on 18.03.2008.

Vide impugned order dated 09.10.2019 (Annexure P-2), the Principal Secretary, Punjab Government, Jail Department, had rejected the case of the petitioner for pre-mature release by considering the case of the petitioner under the Government Policy dated 14.12.2017. Para 3 and 4 of the said order is reproduced hereinbelow:-

3. *“***The accused have committed the brutal murder of two innocent unarmed persons as well as they caused injuries to three others including one lady and one girl child without any provocation***”.*

4. *Whereas the case of life convict was considered under the Govt. Policy dated 14.12.2017 and it has been found that the accused had committed the murder of 2 persons. His case is not covered with the*

policy dated 14.12.2017 as mentioned at Sr. No.8 (ii) of the Policy.”

A perusal of the above would show that the case of the petitioner has been considered under the Policy of 14.12.2017. Learned counsel for the petitioner has submitted that since the date of conviction of the petitioner is 18.03.2008, thus, it is the policy which was existing on the date of conviction, which is to be taken into consideration while deciding the case of the conviction. With respect to the said proposition, the learned counsel for the petitioner has relied upon a judgment of a Co-ordinate Bench of this Court dated 23.09.2015 passed in **CRWP-399-2014** titled as ***Dilbagh Singh Vs. State of Punjab and others***. Reliance has also been placed upon another judgment of a Co-ordinate Bench passed in **CRWP-390-2014** decided on 21.08.2014 titled as ***Partap Singh Vs. State of Punjab and others***. It is further argued by learned counsel for the petitioner that the policy in question which was in existence on the date of conviction was the policy dated 08.07.1991 (Annexure P-1). As per the learned counsel, the case of the petitioner is squarely covered by the said policy. It has been submitted that the petitioner would be covered under Clause 3. As per him, the same would cover convicts who have been imprisoned for life for offences for which death is a penalty but the crimes are not considered to be heinous. It is further submitted that in fact the petitioner has actually suffered incarceration for more than 14 years and his imprisonment along with remission is more than 20 years and, thus, although not admitting, even if his case is considered as a case under clause A or B of the said policy,

then also, the petitioner would be entitled to premature release. It is submitted that at any rate, the impugned order has been passed by relying upon a policy dated 14.12.2017, which is in complete violation of law and, thus, the impugned order deserves to be set aside and the matter deserves to be remanded back for fresh decision.

Learned State counsel has submitted that as per settled position of law, the consideration had to be as per the policy which was in existence on the date of conviction and/or any other policy which is more beneficial for the petitioner.

This Court has heard learned counsel for the parties.

In Dilbagh Singh's case (supra), a Coordinate Bench of this Court while dealing with the same case, has held as under:-

5. Having considered the submissions made by learned counsel for the parties and taking the case from the admitted facts that the petitioner who was convicted and sentenced for commission of offence under Sections 302, 323 and 34 IPC and Sections 25 and 27 of Arms Act and was ordered to undergo Life Imprisonment vide judgment dated 31.10.2003 passed by learned Additional Sessions Judge, Amritsar, the policy of Punjab Government relating to pre-mature release of life convicts was dated 8.7.1991 and thereafter the State Government revised the said policy on 4.4.2013. The case of the petitioner was rejected vide order dated

22.12.2013 [Annexure P/2] primarily on the ground that the petitioner was involved in double murder.

6. Similar matter had gone before Hon`ble Supreme Court of India in **State of Haryana and Ors. Vs. Jagdish, 2010 [3] J.T. 341** and the Apex Court observed that the policy that was existing on the date of conviction is to be taken into consideration while deciding the case of a convict. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, it should relate to the policy, which is favourable to the convict while deciding the case of a 'lifer' for pre-mature release and he should be given benefit thereof. That way, the policy dated 4.4.2013 referred by learned State Counsel is not relevant for the decision of present case.

7. As per policy dated 8.7.1991 [Annexure P/1], Heinous Crimes with reference to category 'B' of 1[1] 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 under Section of IPC i.e. dacoity with

murder

(iv) Offence under Section 302 along with offences under the Terrorists and Disruptive Activities (Prevention) Act, 1987

(v) Offence under Section 302 along with offence under the Untouchability (offences) Act, 1955.

(vi) Offences 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) Any conviction under Section 120-B of the IPC.”

A perusal of offences defined as heinous crimes would reveal that the case of the present petitioner does not fall in heinous crimes. As the case of the petitioner does not fall in the category of 'heinous crime', the impugned order is contrary to the policy decision taken by the State Government, therefore, cannot legally sustain.

8. In view of the above, the present petition is accepted and the impugned order, dated 22.12.2013 [Annexure P/2] is set-aside and the matter is remitted

back to the Principal Secretary, Home Affairs and Justice, Punjab for passing a fresh order taking into consideration policy dated 8.7.1991 [Annexure P/1] and in the light of observations made above, within a period of two months from receipt of copy of this order, failing which the petitioner will be released to the satisfaction of District Magistrate, Amritsar on usual terms and conditions.

9. The writ petition is allowed in the above terms.

Sept. 23rd, 2015”

Perusal of the above would show that even the case of the petitioner therein was rejected on the ground that the petitioner was involved in double murder. Reliance was placed on the judgment of the Hon'ble Apex Court in ***State of Haryana and others Vs. Jagdish, 2010 (2) RCR (Criminal) 464*** to hold that the policy that was existing on the date of conviction is to be taken into consideration while deciding the case of the convict and, thus, it was observed that the policy dated 04.04.2013 referred by the respondent-State was not relevant for the decision of the case. In view of the same, the impugned order in the aforesaid matter was set aside and remanded back to the Principal Secretary, Department of Home Affairs and Justice, Punjab, for passing a fresh order taking into consideration the policy dated 08.07.1991 (Annexure P-1). In the present case also, although even as per the impugned order, the judgment of conviction is dated 18.03.2008 but however, the case of the petitioner has been considered as

per the policy dated 14.12.2017, which is absolutely illegal and against law.

Accordingly, the present criminal writ petition is allowed and the impugned order dated 09.10.2019 (Annexure P-2) is set aside and the matter is remanded back to the Principal Secretary, Punjab Government, Jail Department, to pass a fresh order taking into consideration the policy dated 08.07.1991 (Annexure P-1) within a period of two months from the date of receipt of the certified copy of this order, failing which the petitioner will be released subject to the satisfaction of the District Magistrate, Kapurthala or any other concerned Authority on usual terms and conditions.

(VIKAS BAHL)
JUDGE

September 01, 2021.

sandeep

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.