

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

217+ 1

CRWP-614-2021

Date of decision :21.02.2022

Son Pal

.....Petitioner

VERSUS

State of Punjab and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Akshay Rana, Advocate, for the petitioner.

Ms. A. K. Khurana, DAG, Punjab.

VINOD S. BHARDWAJ, J. (Oral)

The case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

(1) The instant petition raises a challenge to the order dated 24.12.2020 (Annexure P-2) whereby, the application of the petitioner for premature release was rejected by the respondents.

(2) Learned counsel for the petitioner submits that the petitioner was arrested along with co-accused in case FIR No.23 dated 03.03.2003 for offences under Section 302/460/454/455/379 read with Section 149 IPC, registered at Police Station Lalru, District Patiala. After being tried, the petitioner as well as the co-accused were sentenced to undergo life imprisonment vide judgment dated 24.07.2007 passed by Learned Additional Sessions Judge, Patiala. Criminal Appeal No.824-DB of 2007 preferred by the petitioner was dismissed by the High Court vide its judgment dated 17.11.2009. Learned counsel for the petitioner has referred to the Punjab Government Instructions dated 08.07.1991 (Annexure P-1) regarding premature release as per which, a convict who is not involved in a

undergoing 12 years of actual sentence and 18 years of sentence with remissions. It is submitted that the petitioner has undergone an actual sentence of more than 16 years and a total sentence of 24 years inclusive of remissions as per the Government Instructions dated 08.07.1991. It is submitted that the petitioner fulfilled all the pre-requisites for grant of premature release in terms of the Government instructions, however, the same was rejected vide order dated 24.12.2020 for the reason that the case for premature release of the petitioner has not been recommended by the Senior Superintendent of Police, Shahjahanpur (Uttar Pradesh). The District Magistrate, Shahjahanpur (Uttar Pradesh) also did not recommend the premature release after agreeing with the report of SSP Shahjahanpur.

(3) Upon notice, the State of Punjab has filed its reply wherein it has reiterated the stand as noticed in the impugned order and prayed for rejection of the petition.

(4) I have heard learned counsel for the parties and have gone through the pleadings of the case with their assistance.

(5) Learned counsel for the petitioner has argued that the impugned order has been passed in a mechanical manner and further that no valid basis has been given for formation of the opinion that extension of concession of premature release to the petitioner is likely to be a threat to the society at large. Reference was made also to the judgment dated 11.01.2019 passed in CWP No.14413 of 2018 in the case of the co-accused Dhan Singh in case titled as ***Dhan Singh Vs. State of Punjab and others***. It is argued that the case of the co-accused was identically placed and that his prayer of premature release was also rejected vide an identical order by placing reliance upon non-recommendation by the Senior Superintendent of Police,

Shahjahanpur. The impugned order dated 13.04.2018 in the case of the co-accused was set aside with the direction to the State to take a decision within a period of two months. The relevant extract of the order reads as under:-

“ *Short facts which are required to be considered for the purpose of the decision of the case are that petitioner was convicted and sentenced to undergo life imprisonment in case FIR No. 23 dated 3.3.2003, registered at Police Station Lalru for the offence under Section 302, 460, 454 and 455, 379 read with Section 149 of the Indian penal Code in addition to fine by learned Additional Sessions Judge, Patiala.*

State has filed the reply in which plea has been taken that the pre-mature case of the petitioner was declined on the basis of the non recommendation of the Sr. Superintendent of Police, Shahjahanpur (U.P.). It was stated that the case of the petitioner for pre-mature release was again initiated by Additional Director General of Police (Jails), Punjab Chandigarh vide letter No. G.I./J.-4/5751 dated 15.5.2017. However, on the basis of the non-recommendation of the report of the Sr. Superintendent of Police, Shahjahanpur and pre-mature release case was not recommended by the District Magistrate, Shahjahanpur. A perusal of the impugned order 13.4.2018 (Annexure P-4) passed by Additional Chief Secretary, Punjab Government, Home Affairs and Jails Department shows that as per jail roll dated 5.9.2017, the petitioner has undergone 14 years 21 days of actual sentence and with remission (excluding parole) 22 years and 21 days of sentence. Therefore, petitioner has already completed 12 years of actual sentence and 18 years with remission which is required to be completed as per the government policy dated 8.7.1991 (Annexure P-1). However, Sr. Superintendent of Police, Shahjahanpur as well as the District Magistrate, Shahjahanpur have not recommended the case of the petitioner.

I am of the view that the recommendation of the Sr.

Superintendent of Police, Shahjahanpur as well as the District Magistrate, Shahjahanpur are not binding on the State. These are the facts, to be considered, by the State Government. State has to consider whether the apprehension of the police and the District Magistrate, Shahjahanpur is imaginary or real. Merely because Sr. Superintendent of Police, Shahjahanpur apprehend without any material that the petitioner may commit crime again, the pre-mature case of the petitioner could not be declined. As such, impugned order dated 13.4.2018 (Annexure P-4) passed by Additional Chief Secretary, Punjab Government, Home Affairs and Jails Department is set aside. State is directed to reconsider the case of the petitioner for pre-mature release and take fresh decision on the matter after considering whether the non-recommendation report of the Senior Superintendent of Police, Shahjahanpur and District Magistrate, Shahjahanpur is to be relied upon and whether the same is based on facts or not? Necessary decision be taken within two months from the date of receipt of certified copy of this order.”

(6) Pursuant to the said order, co-accused Dhan Singh has been granted the benefit of pre-mature release and the remaining part of the sentence of the said co-accused has been remitted by the State vide order dated 23.07.2020. Case of the petitioner being similarly situated, such benefit could not be denied to him more so when the order remitting sentence of co-accused Dhan Singh had already been passed on 23.07.2020 whereas the case of the petitioner was considered on 10.12.2020. No reasons have been assigned for differentiating the case of the petitioner with that of co-accused.

(7) Learned State counsel has while opposing the petition, argued that the SSP Shahjahanpur had not recommended the case of the petitioner and that even the District Magistrate, Shahjahanpur, agreed with the same. It is

further submitted that the petitioner was involved in yet another case FIR No.03 dated 05.01.2003 under Sections 458/459/460 IPC registered at Police Station Dera Bassi and was convicted in the same. The order rejecting the case of premature release of the petitioner was for valid considerations and after taking note of the recommendations of the Superintendent of Police to the effect that it cannot be denied that the petitioner would not commit any offence again in future and that family members of the petitioner are living normal life and would not be affected by the presence or absence of the petitioner.

(8) Having considered the rival submissions of the parties and having gone through the impugned order, I do not find myself in agreement with the State and find that the impugned order is not sustainable.

(9) Section 432 deals with the power of the appropriate Government to suspend or remit sentences. The Government of Punjab framed a policy dated 08.07.1991 for grant of remissions of sentences of life imprisonment under Sections 432, 433, 433(A) of the Code of Criminal Procedure. For the purposes of considering the case of a convict, his/her conduct in jail for the preceding 5 years has to be seen. The case is to be considered upon the Government being satisfied that in the event of release of the convict, there is no likelihood of the convict committing a crime or breach of peace in any way connected with the circumstances. The relevant provisions read as thus:-

(B) Adults are defined as persons above the age of 18 years.

“(ii) The cases of premature release will only be considered provided the convict has maintained good conduct in jail. For this purpose good conduct means that 'he' or 'she' has not committed any jail offence for a period of five years

prior to the date of the eligibility for consideration for release as per para 1.1 above.

(iii) Case for premature release will only be considered if the Government is satisfied that in the event of release of the convict there is no likelihood of the convict committing a crime or breach of peace in anyway connected with the circumstances of the crime.

2. Procedure to be followed:-

(iii) A copy of the petition simultaneously be forwarded to the District Magistrate for the verification of the contentions made in the petition and a report regarding the likelihood of commission of breach of peace for crime by the convict which is connected with the circumstances for the circumstance of the crime originally committed by him. For this purpose inter-alia, the following will be taken account:-

- a) The behaviour of the convict during periods of parole.*
- b) The views of the local panchayat.*

The actual verification and report regarding likelihood of commission of breach of peace of crime shall be made personally by the concerned station house officer and the report shall be sent under his signatures to the District S.P (SSP). Further the district S.P. (SSP) shall forward it under the own signature to the District Magistrate through own signatures to the District Magistrate who shall further sent it to the Government under his own signatures. These duties shall not be delegated by the District Magistrate and the District S.P (SSP) and the SHO.

2(iv) On receipt of the report from the I.G Prisons as well as the District Magistrate, the State Government will decide the petition in accordance with the policy laid down.”

(10) A perusal of the policy shows that concerned Government should

have satisfied itself that there is no likelihood of a convict committing the crime or breach of peace in the event of a premature release.

(11) A perusal of the order shows that the respondent Authority has nowhere recorded its satisfaction and has merely made a reference to the report of the SSP which is not substantiated and is a mechanical expression of an apprehension. The competent authority has to come to its own conclusion after application of mind to the facts placed before it. No such decision making is however, reflected in the order. There is no basis recorded in the report forwarded by SSP Shahjahanpur (Uttar Pradesh) as well as the District Magistrate, Shahjahanpur (Uttar Pradesh) as to what are the prevailing circumstances or reasons leading to the concerned authority to form such an opinion. Any such recommendation should ordinarily be based upon some tangible or objective material and should not be mere conjectural for subjective mechanical assessment. Further, an opinion expressed by an authority does not automatically become satisfaction of the State Government.

(12) It is also not in dispute that the case of co-accused Dhan Singh was also declined by the appropriate Government for the same reasons and that the said order had been set aside vide judgment dated 11.01.2019 passed in ***CWP No.14413 of 2018 titled Dhan Singh Vs. State of Punjab and others (supra)***. The case of the petitioner is at par with Dhan Singh to whom concession of the premature release was extended by the respondent-State vide order dated 23.07.2020. Needless to mention that the petitioner has remained in custody for a period of more than 16 years without any complaint and as such, there is no valid basis to assume that the petitioner has not reformed or that he is more prone to commission of criminal acts in

the event of being grant of benefit of premature release.

(13) Further, this Court in the matter of ***Darshan Singh Vs. State of Punjab and another reported as 1990 (2) RCR (Crl.) 1***, held that vague allegations regarding possible apprehension of breach of peace or indulgence in referring criminal act are of no consequence in withholding the concession. Such apprehension can be duly addressed by incorporating adequate safeguards in the order granting premature release. The relevant extract of the judgment in the matter of ***Darshan Singh's case (Supra)*** is as under:

“The law is well settled on the point that vague allegations regarding the apprehension of breach of peace on the premature release of a life convict are of no consequence in withholding such concession. The Apex Court in Bhagwat Saran vs. State of UP., 1983 (1) Chandigarh Law Reporter 504 has settled this controversy as under:

“ After hearing counsel on either side and considering the affidavit of the respondents filed herein we are satisfied that it is a case where the Committee's recommendations should have been accepted by the Government. The Committee had recommended the release of these prisoners after taking into consideration the behaviour inside the jail as well as other factors. The only ground given by the State in the counter affidavit is that “after considering their cases sympathetically, keeping in view of the law and order situation they cannot be released.” A bald statement like that without any attempt to indicate how law and order is likely to be adversely affected by their release cannot be accepted. In fact there are no reasons why recommendations could not be accepted. We direct that the petitioners be released forthwith.”

8. *Moreover, the remote apprehension of breach of peace at the hands of released prisoner can be well safeguarded by demanding heavy surety bond by the concerned authority.”*

(14) In addition thereto the State has not been able to distinguish how the case of the petitioner is distinct and separate from that of the co-accused Dhan Singh and why a similar concession be not extended to the petitioner on the grounds of parity.

(15) In the light of facts noticed above and the position of law, I am of the view that impugned order dated 24.12.2020 passed by the Principle Secretary, Government of Punjab, Jail Department, suffers from hypothetical conjectures and is not based upon any valid foundation. It further fails to indicate any reason as to why the case of the petitioner ought not to be treated at par with other accused-Dhan Singh to whom similar concession has been extended under similar circumstances. The impugned order dated 24.12.2020 (Annexure P-2) is accordingly set aside. State is directed to reconsider the case of the petitioner ignoring the recommendation that the petitioner is likely to commit crime again and to pass a fresh reasoned and speaking order within a period of two months from the date of receipt of certified copy of this Order. It is further directed that if the Government is unable to decide the case of the petitioner within the aforesaid period of two months, the petitioner shall be released on interim parole till the time that his case is decided on merits. Hence, the petition is allowed.

(VINOD S. BHARDWAJ)
JUDGE

21.02.2022
anil

<i>Whether speaking/reasoned :</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>