

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

228

CRWP-456 of 2020
Date of Decision : 10.11.2021

Parmod

...Petitioner

Versus

State of Haryana and others

...Respondents

(Through Video Conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Varinder Singh Rana, Advocate for the petitioner.

Mr. Karan Garg, AAG, Haryana.

Harsimran Singh Sethi, J. (Oral)

The present petition has been filed challenging order dated 29.01.2019 passed by respondent No.1-State of Haryana, whereby, prayer of the petitioner for his premature release from jail has been rejected. Further prayer of the petitioner is for issuance of a direction to the respondent-State to release him from prison as the petitioner has already completed the required sentence as per Policy dated 12.04.2002 issued by the respondent-State of Haryana.

The factual aspects of the case are that the petitioner was convicted vide order dated 22.11.2006 passed by the Additional Sessions

Judge, Sonapat in FIR No.101 dated 26.4.2004 registered under Sections 302, 303, 120-B and 34 of the IPC and Section 25 of the Arms Act at Police Station City Sonapat, District Sonapat and was sentenced to undergo life imprisonment. The appeal filed by the petitioner against the said judgement of conviction being CRA-D-178-DB-2007 was also dismissed by this Court on 25.02.2012 and the conviction as well as the sentence impugned attained finality.

Learned counsel for the petitioner submits that while undergoing the sentence, the petitioner was allowed to avail benefit of parole for a period of 26 weeks and during the said period, there were no allegations against the petitioner for violation of any provisions of law and till the filing of the present petition in the year 2018 according to the petitioner, he had already undergone 12 years of actual sentence and 16 years of total sentence including remissions. The petitioner has filed the present petition claiming that he has already undergone the required sentence, therefore, he is entitled for premature release, keeping in view the Policy dated 12.04.2002 issued by the Government of Haryana, which is applicable in the case of the petitioner as well.

After being convicted, in the year 2011 the petitioner was extended the benefit of parole, which he had jumped, for which also an FIR No.371 dated 18.07.2011 under Sections 8/9 of the Parole Act at Police Station Sadar, Karnal was registered against him. In the said FIR also, the petitioner was convicted and sentenced to undergo imprisonment for a period of one year alongwith fine of Rs.500/-. According to the learned counsel for the petitioner, as the petitioner has already undergone more than 14 years of sentence with remissions, even the sentence awarded to the

petitioner in FIR No.371 dated 18.07.2011 has also been completed.

Notice of motion was issued and the respondent-State has filed reply. In the reply filed by the respondent-State it was mentioned that State Government has framed the policy for the premature release of the life convicts keeping in view the gravity, nature of offence, manner and circumstances under which the crime was committed and keeping in view the Policy, which was applicable at the time of conviction of the petitioner i.e. Policy dated 12.04.2002, the case of the petitioner is covered under Para 2(b) of the said policy, according to which, a life convict is required to undergo sentence of 10 years as actual sentence and not less than 14 years of total sentence including remissions, which sentence though, had been completed by the petitioner but as the petitioner had violated the parole rules and remained absconded for a period of 01 year, 07 months and 07 days, due to which, the consideration of the case of the petitioner for premature release was deferred by State Level Committee for period of one year. Paras-5,8 & 9 of the reply of respondent-State are as under:-

“5.That it is submitted that the State Government has framed the premature release policies from time to time for premature release of the life convicts as per gravity, nature of offence, manner and circumstances under which the crime was committed etc. At the time of his conviction the premature release policy was applicable dated 12-04-2002 and his case comes under para 2(b) of this policy, which is already annexed with the writ petition as Annexure P-1.

8.That the petitioner has undergone total sentence 14 years, 09 months and 28 days with remission but the petitioner remained absconded for 01 year 07 months and 07 days from furlough/parole and hence his premature

release will be deferred for 01 year as decided by the State Level Committee as stated above. The petitioner is required to complete his total 15 years sentence with remission, thereafter premature release case will be sent to the State Level Committee for consideration.

9.That the detail of the sentence undergone by the petitioner as on 13.09.2018 is as under:-

Sr. No.	Particulars	Period	Years	Months	Days
1.	Undetrial period	26.04.2004 to 21.11.2006	02	06	26
2.	Conviction period	22.11.2006 to 13.09.2018	11	09	22
	Actual sentence		14	04	18
3.	Remission earned (+)		02	07	17
	Total=		17	00	05
4.	Parole availed (-) 30 weeks		00	07	00
5.	Detail of Overstay/ Absent from parole (-)		01	07	07
	Total sentence =		14	09	28

Keeping in view the said chart, a direction was issued by this Court on 12.11.2018 to the State Level Committee to consider the case of the petitioner for premature release from the jail and in pursuance to the said direction the case of the petitioner was considered and an impugned order dated 29.1.2019 has been passed by the respondent-State, wherein it has been mentioned that the case of the petitioner is covered under Clause 2(a) (xii) and (xiv) of the policy of the Government of Haryana dated 12.04.2002, according to which, the case of a life convict may be considered for premature release from jail after completion of 14 years of actual

sentence and 20 years of total sentence including remissions, which sentence the petitioner is yet to undergo. The said order has also been challenged in the present petition by amending the present petition from CWP No.17170 of 2018 to CRWP No.456 of 2020.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

In the present case, the prayer of the petitioner is for his premature release keeping in view the Policy dated 12.04.2002 issued by the Government of Haryana. The said prayer was rejected by the State Level Committee on the ground that as per the Clause 2(a) (xii) and (xiv) of the policy dated 12.04.2002, which covers the case of the petitioner, the petitioner has to undergo 14 years of actual sentence and 20 years of total sentence including remissions, which the petitioner is yet to undergo.

This is a classic case, where, in the same proceedings two different stands have been taken by the respondent-State of Haryana qua the same plea. When the petitioner initially filed the petition seeking premature release, the State of Haryana filed reply, wherein it has been clearly stated by the respondent-State of Haryana that the case of the petitioner is covered under Para 2(b) of the Policy dated 12.04.2002 and the non-release of the petitioner from jail is only on the ground that the petitioner jumped his parole for more than an year, due to which, the State Level Committee deferred his case for consideration for premature release for a period of one year and upon completion of the said one year, when fresh order was passed by the State Level Committee, the same prayer of the petitioner has been rejected on a different ground that the case of the petitioner is to be considered under Clause 2(a) (xii) and (xiv) of the policy dated 12.04.2002.

This action of the respondent-State of Haryana itself shows the non-application of mind, where two different stands have been taken by the respondent-State for declining the same prayer of the petitioner, which is not permissible. Before proceeding further, relevant clause of the policy dated 12.04.2002 and provisions under which the respondent-State has rejected the claim of the petitioner for his premature release are reproduced for ready reference:-

	a) Convicts who have been imprisoned for life having committed a heinous crime such as: (i) Murder with wrongful confinement for extortion/robbery. (ii) Murder while undergoing life sentence. (iii) Murder with dacoity. (iv) Murder with offence under TADA Act, 1987. (v) Murder with untouchability (offences) Act, 1955. (vi) Murder in connection with dowry. (vii) Murder of a child under the age of 14 years (viii) Murder of a woman. (ix) Murder after abduction of kidnapping. (x) Murder exhibiting brutality such as cutting the body into pieces of burning/dragging the body as evident from judgment of the court. (xi) Persistent bad conduct in the prison. (xii) Convict who cannot for some definite reasons be prematurely released without danger to public safety. (xiii) Convicts who have been imprisoned for life under Section 120-B of IPC. (xiv) Any other crime that the state level committee considers to be heinous for reasons to be recorded in writing.	Their cases may be considered after completion of 14 years actual sentence including under trial period provided that the total period of such sentences including remissions is not less than 20 years.
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b)	Adults life convicts who have been imprisoned for life but whose cases are not covered under (aa) and (a) above and who have committed crime which are not considered heinous as mentioned in clause (aa) and (a) above.	There cases may be considered after completion of 10 years of actual sentence including undertrial period, provided that the total period of such sentences including remissions is not less than 14 years.
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Keeping in view the facts, which have been stated hereinabove, learned State counsel was requested to point out as to how the case of the petitioner is to be considered under Clause 2(a) (xii) and (xiv) of the policy of Government of Haryana dated 12.04.2002 and not under Clause 2 (b). Learned State counsel on the basis of a reply filed by the respondent-State submits that as the petitioner is facing a numbers of cases, he can be a threat to the public safety if released from jail but, he has not been able to point out any reason given by the respondent-State in the impugned order, as to how, the claim of the petitioner was being rejected as the same being covered under Clause 2(a) (xii) and (xiv) of the policy dated 12.04.2002.

A bare perusal of the policy of Government of Haryana dated 12.04.2002 would show that in order to bring the case of a life convict under Clause 2(a) (xii), there has to be definite reasons that the convict is a danger to the public safety. In the present case, no such reason has been enumerated in the impugned order. Even otherwise, the petitioner was extended the benefit of parole for a period of 26 weeks while he was undergoing the sentence and he had completed the same without there being any allegations against him that he was a threat to the public at large. Even otherwise, during the pendency of the present petition, the petitioner has been granted the benefit of interim bail by a Coordinate Bench of this Court vide order dated 07.05.2019 and nothing has come on record that in the last two and a half years the petitioner has acted in a manner which can be

termed as threat to the public safety.

Learned State counsel has not been able to rebut these facts.

In the opinion of this Court, Clause 2(b) of the policy dated 12.04.2002 which has been reproduced hereinbefore covers the case of the petitioner. Not only in the opinion of this Court but, even the stand of the respondent-State while filing written statement to the present petition was also the same that the case of the petitioner is covered under Clause 2(b) of the Policy dated 12.04.2002, which is clear from the averments recorded in the written statement, which have been reproduced hereinbefore.

That being so, as per Clause 2(b) of the Policy dated 12.04.2002 for availing the benefit of premature release, the petitioner was required to undergo 10 years of actual sentence and 14 years of total sentence with remissions whereas, up to 13.09.2018, the petitioner had already undergone actual sentence of 14 years, 04 months and 18 days and total sentence of 14 years, 09 months and 28 days with remissions.

Keeping in view the facts and circumstances which have been stated hereinbefore, this Court is of the view that the case of the petitioner was required to be considered by the respondent-State under Clause 2(b) of the policy of Government of Haryana dated 12.04.2002, for which the petitioner has already undergone the required sentence for his premature release. That being so, impugned order dated 29.1.2019 passed by the respondent-State is not only factually incorrect but, has been passed without due application of mind especially, in view of the fact that two different stands have been taken for the same plea by the respondent-State themselves in the present proceedings. Thus, respondent-State is directed to issue release order of the petitioner in respect of conviction and sentence of

the petitioner in FIR No.101 dated 26.04.2004. As the petitioner is already on interim bail, the petitioner is not required to surrender but, the respondent-State will pass an appropriate order releasing the petitioner prematurely.

It is made clear that as the present order is passed keeping in view the conviction of the petitioner in FIR No.101 dated 26.04.2004 registered under Sections 302, 303,120-B and 34 of the IPC and Section 25 of the Arms Act at Police Station City Sonapat, District Sonapat and as the petitioner is also convicted and sentenced in another FIR No.371 dated 18.07.2011, the respondent-State is directed to pass an appropriate order with regard to serving of the sentence by the petitioner in FIR No.371 dated 18.07.2011 registered under Sections 8/9 of the Parole Act to the effect whether keeping in view the sentence already undergone by the petitioner in FIR No.101 dated 26.04.2004, the petitioner is still required to undergo sentence imposed upon him in the FIR No.371 dated 18.7.2011 and the said decision of the competent authority be also conveyed to the petitioner. In case, it is found that the petitioner is yet to undergo the said sentence as awarded to him in FIR No.371 dated 18.07.2011, the petitioner will surrender before the authority concerned within a period of two weeks of communication of the said order so as to undergo the sentence awarded to him in FIR No.371 dated 18.07.2011.

The present petition allowed in above terms.

November 10, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No