

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-1288-2020 (O&M)
Date of decision: 16.11.2021

Chota Ram

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. B.P.K. Brar, Advocate and
Mr. Kamal Kumar Yogi, Advocate (legal aid counsel)
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for issuance of a writ in the nature of mandamus directing the respondents to consider and decide the premature release case of the petitioner, as he has already undergone more sentence, required for consideration of his case.

Learned counsel for the petitioner submits that the petitioner was arrested in connection with FIR No.9 dated 17.05.1992 under Sections 120-B, 302, 34 IPC, Police Station Khanauri, District Sangrur and thereafter, he was sentenced to undergo life imprisonment vide order dated 10.05.2002 and at present, he is confined in District Jail, Sangrur. It is further submitted that the appeal i.e. CRA-D-460-DB-2002 filed by the petitioner against the judgment of conviction and order of sentence has already been decided vide order dated

01.04.2014. It is also submitted that the petitioner has undergone the requisite sentence as per Govt. of Punjab policy dated 08.07.1991 and therefore, the jail authorities have initiated the premature release case of the petitioner vide letter No.1323 on 24.05.2018 with a recommendation to the concerned District Magistrate. It is next submitted that even the District Magistrate has also submitted the verification report to respondent No.2 vide letter No.4304 dated 09.10.2018.

Learned counsel has further submitted that despite the fact that case of the petitioner is pending since May, 2018, no decision has been taken and he is undergoing the sentence.

Reply by way of affidavit of Superintendent, District Jail, Sangrur is on record, in which it is stated that premature release case of the petitioner was initiated by respondent No.3 under non-heinous category of premature release policy dated 08.07.1991 and the convict, whose case falls under non-heinous category, is required to undergo 10 years actual sentence and 14 years actual or with remission. It is further stated that case of the petitioner is under active consideration of the Govt., however, he has committed the jail offence under Section 52-A of Prisons Act, qua which FIR No.284 dated 31.08.2017, Police Station City Sangrur was registered and as per premature release policy, conduct of a convict in the jail for the last 05 years is to be taken into account for premature release. With regard to custody, it is stated in the affidavit that the petitioner has undergone actual sentence of 10 years, 03 months and 26 days as on 04.02.2019 and imprisonment of 17 years and 14 days including remission and excluding parole upto 04.01.2019 (when this affidavit was filed).

Learned State counsel has relied upon a letter dated 18.06.2019

(Annexure R-1) filed along with another affidavit of Superintendent, District Jail, Sangrur, vide which the Additional Director General of Police, Jails, Punjab had informed the Superintendent, District Jail, Sangrur that premature release case of the convict be again sent after 05 years from the date of registration of FIR No.284/2017 under Section 52-A of Prisons Act. It is thus submitted that time period has not lapsed and therefore, the petitioner is not entitled to premature release.

In reply, learned counsel for the petitioner has relied upon the order dated 23.03.2018 passed in CRWP-1214-2017, wherein, while dealing with similar allegations, following observations were made by this Court: -

*“It is contended that the case of the petitioner falls under category 1.1 (c) of the Government instructions dated 08.07.1991 which requires the convict to undergo eight years of actual sentence and 12 years with remissions. It is submitted that the case of the petitioner for grant of premature release was initiated on 23.05.2017 and rejected on 07.07.2017 (Annexure P-2) due to registration of FIR No.12 dated 10.01.2015 under Sections 186, 332, 353, 148, 149 IPC. The petitioner's case for premature release was earlier rejected twice on 07.07.2010 and 21.09.2012. The petitioner, it is contended, has undergone the requisite period of the sentence as required in terms of the policy applicable to the petitioner. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **State of Haryana versus Ghaseeta Ram 1997 (3) SCC 766** and the judgment of this Court in **Kamal Kant Tiwari versus State of Punjab and others 2014 (2) RCR (Criminal) 940***

to submit that commission of a jail offence is not a valid ground to deny premature release of an accused, especially when the person is liable to be punished separately for the said jail offence. It is, thus, prayed that this petition be allowed.

Learned counsel for the State while not denying the period of custody undergone by the petitioner submits that the impugned order dated 07.07.2017 has been rightly passed. The petitioner's case for premature release has to be considered after a period of five years from the commission of jail offence. It is, thus, prayed that this petition be dismissed.

Heard, learned counsel for the parties.

In the reply by way of affidavit dated 14.03.2018 of Smt. Damanjit Kaur Walia, Superintendent Women Jail, Ludhiana, filed on behalf of the State, it is mentioned that the petitioner has undergone 18 years, 06 months and 11 days of the actual sentence as on 22.05.2017. In case, the period of remission is included, she has undergone 25 years, 06 months and 07 days of the sentence imposed upon her. It is specifically mentioned that for the jail offence (FIR No. 12 dated 10.01.2015), the petitioner was sentenced to undergo rigorous imprisonment for six months. The sole premise, on which the case of the petitioner for consideration of premature release has been rejected, is that she was convicted for the jail offences and the period of five years therefrom has not lapsed.

*This Court in **Kamal Kant Tiwari's** case (supra) specifically*

*observed that it is not permissible for the authorities to reject the case of the convict for premature release only on the ground that he is guilty of a jail offence. Reference was made to the decision of this Court in **Raj Kumar versus State of Punjab etc.** in CRM-55534-M-2006 dated 12.12.2006, wherein it was observed that:-*

*“The counsel for the petitioner has relied on a judgment of this Court in the case of **Subkash v. State of Haryana, 1994 (3) Recent CR 489** to urge that commission of jail offences would be no legal or valid ground to deny the concession of premature release if it has become due, specially so when the convict had already been punished for the jail offences. While so holding, this Court in Subhash's case (Supra) has relied on the case of **Lila Singh v. State of Punjab, 1988 (1) RCR 28**. It was held that jail offences committed by the convict for which he has already been punished, cannot be taken into consideration while deciding the case for premature release. Admittedly, the case of the petitioner for consideration on his premature release has been declined on the ground that the same can be considered only if the convict has maintained a good conduct in jail. As per the reply, good conduct means that the person has not committed any jail offence for a period of five years prior to the date of his eligibility for consideration of release. It is accordingly pleaded that the benefit of premature release cannot be granted to the petitioner as his case is not*

covered by the instructions, as aforementioned. The stand of the State cannot be appreciated being contrary to the law laid down by this Court. The case of the petitioner is fully covered by the judgment of this Court, referred to above. It has been clearly held by this Court that commission of a jail offence is no legal ground to deny the premature release, especially when the person has been punished for such a misconduct. Accordingly, the action of the respondents in not considering the case of the petitioner for premature release cannot be sustained. The petitioner is entitled to a consideration of his case for premature release in terms of the instructions, Annexure P-1.”

Therefore, keeping in view the facts and circumstances of the case, it is concluded that the impugned order dated 07.07.2017 (Annexure P-2) was erroneously passed by Additional Chief Secretary, Punjab Government Home Affairs and Justice Department and the same is set aside.”

After hearing learned counsel for the parties and in view of judgment of the Hon’ble Supreme Court in **Ghaseeta Ram**’s case (supra) and **Kamal Kant Tiwari**’s case (supra), the order dated 18.06.2019, declining the premature release case of the petitioner on account of registration of an FIR under Section 52-A of Prisons Act, is set aside.

The State authorities are directed to consider the case of the petitioner for premature release without taking into consideration the jail offence committed by him and pass necessary orders within two months of

receipt of certified copy of this order, failing which the petitioner be released on parole on his furnishing personal bonds and surety to the satisfaction of the concerned District Magistrate. The petitioner shall give an undertaking that he will not leave the country without prior permission of the Court, while maintaining peace and not indulge in any nefarious activity, while on parole.

Accordingly, the present petition is disposed of.

[ARVIND SINGH SANGWAN]
JUDGE

16.11.2021
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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No