

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

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CRWP-1020-2022 (O&M)
Reserved on: April 02, 2022
Date of decision: 21.04.2022

SUKHDARSHAN SINGH

... Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present : Mr. Nandan Jindal, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J.

By means of instant petition, the petitioner has invoked the jurisdiction under Article 226 of the Constitution of India for claiming premature release as per the terms and conditions of policy dated 08.07.1991 (hereinafter to be referred to as 'policy of 1991') and in terms of the directions issued by the Hon'ble Supreme Court in the matter of **State of Haryana Vs. Jagdish**, reported as **(2010) 3 JT 341** and for a further direction to respondent-State to send and decide the case of the petitioner for premature release by passing a speaking order.

2. The facts in brief necessitating the filing of the present petition are to the effect that the petitioner faced prosecution in case FIR No.133 dated 29.05.2007, under Sections 148, 149, 302, 307, 324, 323, 506 of the IPC registered at Police Station: Division No.5, Ludhiana, District Ludhiana.

2.1 That the petitioner was convicted in the said FIR vide judgment dated 30.01.2016 passed by the Additional Sessions Judge, Ludhiana and the

petitioner was sentenced to undergo life imprisonment. An appeal against the said judgment was preferred by the petitioner before the High Court bearing No.CRA-D-256-DB-2016 and the same is pending adjudication.

2.2 That the petitioner claimed that he is in custody since 13.12.2008 and has already spent more than 13 years of actual sentence and has also completed more than 18 years of total sentence including remissions. He further claims that in terms of the various precedent judgments of the High Court, the period of parole of about 02 years, 01 month and 01 day has to be deducted from the total sentence and not from the actual sentence. Reliance in this regard has been placed on the judgment of ***Ram Kishan Hooda Vs. State of Haryana*** reported as ***(1998) 3 RCR (Criminal) 514***. It is claimed that the petitioner was released on parole on 05.02.2020 for a period of 08 weeks and thereafter, pandemic of COVID sat in and his parole was extended upto 27.03.2021. However, he could not surrender on the said date as the petitioner himself was suffering from corona and had sent his medical report to the jail authorities. However, without considering the said fact, an FIR had been registered against the petitioner under Section 8 and 9 of The Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 (hereinafter to be referred to as 'the Act of 1962'.) The petitioner was convicted by the Judicial Magistrate Ist Class, Ludhiana in the said case and was sentenced to undergo imprisonment for a period of 01 month and 21 days, against which an appeal has already been filed and the sentence of the petitioner has been suspended by the Addl. Sessions Judge, Ludhiana. It is contended that the respondent/State is not considering the case of the petitioner for premature release in term of the policy of 1991, even though the petitioner is fully eligible to be considered for premature release. Further, the case of the petitioner does not fall in the category of heinous crimes in Column -B and would rather fall in Column-C, where an accused is

entitled to premature release upon completion of an actual sentence of 10 years and a total sentence of 14 years. It is submitted that for the purposes of being considered in Column-B under the heinous crimes, the offence in question must fall within the category prescribed in the policy of 1991, and as the conviction of the petitioner does not fall under the said category, hence his conviction cannot be said to be under Column-B of the policy of 1991. Learned counsel for the petitioner has placed reliance upon the custody certificate to show that as per the custody certificate, the petitioner has undergone an actual custody of 12 years 06 months and 21 days and a total sentence of 17 years, 05 months and 28 days including remissions as on 03.03.2022.

2.3 That it was further submitted that the case of the petitioner was not being considered for premature release by the respondents, firstly by treating it a heinous offence under Column-B, and claiming that the total imprisonment with remissions should be 18 years, and secondly on the ground that an FIR under Section 8 and 9 of the Act of 1962 has already been registered against the petitioner and he has been convicted therein. It is further submitted by the learned counsel for the petitioner that even the second ground is not tenable as the petitioner had already completed his period of sentence in the year 2021, hence any subsequent conduct is immaterial and cannot be taken into consideration for processing and considering the case of the petitioner for premature release. It is further urged that it was the duty of the respondent-State to send the case of the petitioner one year prior to the completion of his sentence as is prescribed in the Jail Manual, whereas the case of the petitioner has not been forwarded till date.

3 The present petition has been opposed by the respondent-State being represented by Mr. Karanbir Singh, AAG, Punjab, and a reply in this regard has been filed wherein no dispute has been raised qua the facts noticed above.

However, it is claimed that as per the policy of 1991, the case of the petitioner falls under the category of heinous crime in Column-B(i) and that the actual imprisonment to be undergone by a convict is 12 years and total imprisonment with remissions should be 18 years. As the total sentence of the petitioner including remissions was 17 years, 05 months and 28 days, hence, the petitioner was not eligible for premature release. It is claimed by the counsel for the State that as per letter of ADGP, dated 18.08.2020, the period of parole availed by the convict is to be deducted from the actual sentence. Without going into the said aspect for the determination of the present case, it is not disputed by the respondent-State that the petitioner has undergone actual custody period of 12 years 06 months and 21 days and has already undergone total sentence of 17 years, 05 months and 28 days. The claim of the petitioner is to the effect that he is not to be considered under the category of heinous crime vide Column-B(i) since his case does not fall in the said category as has been classified as heinous offences in the policy of 1991. The same is to be considered under the category falling under Column-C, for which the actual imprisonment required is 10 years and including remissions, it is 14 years. It further submitted by the learned State counsel that the claim of the petitioner is baseless because as per the policy of 1991, his case does not fall under Column-C, rather it falls under Column-B, which disentitles him for premature release. Hence, learned State counsel prayed for dismissal of the present petition. For the purposes of justifying its stand, the respondent-State has urged that as per the policy of 1991 and paragraph 4 of the Jail Manual, in order to be eligible for premature release, a convict is required to undergo 12 years of actual sentence and including remissions 18 years of total sentence and as per Column-B (ii) of the policy, the premature release case of a convict will be considered only if the convict has not committed any jail offence five years prior to the said

eligibility. However, the petitioner has committed a jail offence by surrendering 75 days later from the date of expiry of his parole, which is a jail offence, and also, he has been convicted for the same under Section 8 and 9 of the Act of 1962.

4. I have heard the learned respective counsel for the parties and have also gone through the record and documents relied upon by both sides.

5. The undisputed facts, which emerge from the arguments of both sides, are that the petitioner is in custody since 2008 for having been convicted for the offences under Sections 148, 149, 302, 307, 324, 323, 506 of the IPC. The respondents have not disputed or denied that the policy of 1991 is applicable to the petitioner.

6. Learned counsel has even though raised an argument that his case falls under Column-C of the policy of 1991, however, the said case is not pleaded by the petitioner in his petition. As a matter of fact, the entire case set up by the petitioner is as regards the consideration of his claim for premature release despite the application of Column-B to his case and claims that the petitioner fulfills the eligibility conditions prescribed therein.

7. It is also evident from the record that vide judgment dated 30.01.2016, the Additional Sessions Judge, Ludhiana has convicted the petitioner by recording that it is grave and serious offence, whereby the deceased was snuffed out of his life at a very young age. As per the policy of 1991, a grave and serious offence does not mean the same as a heinous offence. The category of heinous offence in Column-B(i) of the policy of 1991 are reproduced as under:

- “(i) offence under Section 302 alongwith 347 of the I.P.C. 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 alongwith offence under the Terrorist and Disruptive Activities (Prevention) Act, 1987.*

- (v) *Offence under Section 302 alongwith 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 I.P.C. Heinous crimes with reference to column. “d” of the revised policy are defined as follows:*
 - (i) *Offence under Section 304 (b) of the IPC, i.e. dowry death.*
 - (ii) *Offence under Section 304 alongwith Section 347 of the IPC, i.e. Culpable homicide with wrongful confinement for extortion.*
 - (iii) *Offence under Section 304 with Section 375 i.e. Culpable homicide with rape.*
 - (iv) *Offence under Section 304 alongwith offences under the Terrorist and Disruptive Activities (prevention) Act, 1987.*
 - (v) *Offence under Section 304 where culpable homicide has been committed in connection with any dispute on dowry and this is indicated in the judgment of the trial Court.*
 - (vi) *Offence under Section 304 where the victim is a child under the age of 14 years.*
 - (vii) *Any conviction under Section 120-B of the IPC i.e. for criminal conspiracy in connection with above crimes.”*

8. The offence for which the petitioner has been convicted does not fall in any of the categories that have been defined as heinous offence in the policy of 1991. Hence, despite absence of a specific pleading in this regard, it prima facie seems that the case of the petitioner does not fall in the category of heinous

crimes. In such eventuality, he would be prima facie entitled to be considered for premature release upon completion of 10 years of actual imprisonment, and a total sentence including remissions for a period of 14 years.

9. Consequently, while dealing with the assessment of the offence committed by the petitioner, the provision of the policy of 1991 is that five years' conduct of a convict has to be seen prior to the date of his eligibility. Hence, the evaluation of conduct of five years prior to the date of consideration of the claim of the petitioner is not a mandate of law, and that the conduct, which is required to be taken into consideration by the authorities, has to be seen as on the date of eligibility. The claim of the petitioner to the effect that since his conviction under the Act of 1962 is an event subsequent to his eligibility, therefore, it cannot be taken into consideration for denial of his entitlement to claim a premature release, seems to carry weight. It is further worthwhile to point out that formula of deducting the period of parole from the actual sentence was argued in meeting held on 16.07.2020 and the same cannot be applied retrospectively as per the judgment of this Court passed in the case of ***Jai Kishan @ Bhola Vs. State of Punjab and others*** bearing case no. ***CRWP-7180 of 2021 decided on 11.02.2022.***

In view of the provisions as contained in the policy of 1991 as also the precedent judgments of this Court, I am of the opinion that the reasons given by the respondent-State in its reply do not hold force. Apparently, the offence for which the petitioner has been convicted does not fall under the category of heinous offence as defined and described in the policy of 1991, as reproduced above, and further that the conduct, subsequent to the date of eligibility, cannot be taken into consideration for the purposes of determining the eligibility and entitlement of a convict to claim premature release.

10. In view of the above, the instant petition is allowed and a direction is

issued to the respondent-State to process the case of the petitioner for premature release keeping in view the observations of this Court made herein above. The decision in this regard shall be taken by the respondent-State within a period of two months from the receipt of certified copy of the instant judgment. In the event, such decision is not taken within the aforesaid time frame, the petitioner shall be entitled to be released on parole till such time that the respondent authorities take a fresh decision on the premature release of the petitioner.

Petition stands disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

April 21, 2022
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<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>