

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

**CRWP-909-2020**

**Date of Decision:25.02.2022**

**Jai Parkash**

**...Petitioner**

**Versus**

**The State of Haryana and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. H.S. Jaswal, Advocate,  
for the petitioner.

Mr. Amreek Singh Narwal, DAG, Haryana.

**SANT PARKASH, J.**

The instant Criminal Writ Petition has been preferred under Article 226/227 of Constitution of India for issuance of a writ in the nature of mandamus, directing the respondents to consider the application dated 09.08.2019 (P-4) made by the brother of the petitioner for releasing the petitioner prematurely in view of the policy/instructions dated 12.04.2002 (P-2).

The petitioner was arrested in case FIR No.312 dated 03.06.2000 under Sections 302/34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act registered at Police Station Sadar Gurgaon, District Gurgaon. The petitioner was tried for the aforesaid offences and after completion of trial, the petitioner was convicted and sentenced to life imprisonment by the Court of learned Additional Sessions Judge, Gurgaon vide order dated 31.10.2003. Aggrieved against the said judgment, the appellant preferred an appeal before this Court, which was also dismissed by this Court.

Learned counsel for the petitioner submitted that the petitioner was convicted on 31.10.2003, therefore, the policy dated 12.04.2002 would be applicable for considering the case of premature release. He contended that the case of the petitioner falls under clause 2(b) of the said policy, which prescribes 10 years of actual sentence including under trial period and after earning at least 04 years remissions. He further contended that the petitioner has already undergone more than 17 years and 09 months of actual sentence and more than 21 years and 06 months of total sentence including remission. He further submitted that for the jail offence, i.e. absconding from parole, he has already been punished. However, the premature release case of the petitioner has not been considered on the ground that petitioner had been convicted and sentenced to undergo life imprisonment in two different FIRs. He also submitted that in the second case, i.e. FIR No.366 dated 05.05.2006 registered under Sections 302/34/120B/353 IPC at Police Station City Gurgram, the petitioner is already on bail as his appeal, arising out of said FIR, is pending consideration before this Court. He also argued that even if the appeal filed by the petitioner in connection with FIR No.366 dated 05.05.2006 is dismissed, then in that eventuality, the case of the petitioner will fall under para 2(a)(ii) of the said policy. Thus, he argues that since the petitioner has already undergone more than the required sentence, his further detention in jail is illegal.

On the other hand, learned State Counsel has strongly opposed the present petition on the ground that since the petitioner had committed a heinous crime, hence his case falls under clause 2(aa)(iv) (persons convicted for second time for murder) of the policy dated 12.04.2022, which

prescribes 20 years of actual sentence and 25 years of total sentence including remissions. He further submitted that the petitioner was released on parole on 13.06.2005 for one week and was directed to surrender on 21.06.2005 but he did not surrender on due date and remained absconded from parole for more than 03 years and 11 months. Even more, during absconding period, he had committed another murder. Thus, the case of the petitioner falls under clause 2(aa)(iv) of the said policy.

This Court has heard the learned counsel for the parties and perused the case file including the relevant Premature Release Policy.

It is not disputed that the case of premature release of a life convict is governed by the policy of the Government prevailing on the date of judgment of conviction and not by the policy which existed on the date of consideration of his premature release. Undisputedly, at the time of conviction of petitioner i.e, 31.10.2003, the prevailing policy for pre-mature release of convicts was Premature Release Policy dated 12.04.2002.

The State government vide Notification dated 12.04.2002 revised the policy regarding pre-mature release of life convicts. The relevant portion thereof reads as under:-

|      |                                                                                       |                                                                                                                                                                                  |
|------|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a)  | Convicts who have been imprisoned for life having committed a heinous crime such as:- | their cases may be considered after completion of 14 years actual sentence including under trial period provided of such sentence including remissions is not less than 20 years |
| (i)  | xx xx xx                                                                              |                                                                                                                                                                                  |
| (ii) | Murder while undergoing life sentence                                                 |                                                                                                                                                                                  |

Admittedly, the petitioner was initially convicted in case FIR No. 312 dated 03.06.2000 under Sections 302/34 IPC and sentenced to undergo life imprisonment. It is also not disputed that when the petitioner was on parole in the said case, he committed another murder for which FIR

No.366 dated 05.05.2005 was registered under Sections 302/34/120-B/353 IPC against him. In the second FIR, he was convicted and sentenced to life imprisonment by the learned Additional Sessions Judge, Rewari vide order dated 01.09.2011. Aggrieved by the said judgment, the petitioner preferred an appeal, which is pending consideration before this Court. Thus, it is clear that when the petitioner was undergoing life imprisonment in first FIR No.312 dated 03.06.2000, he committed second murder, attracting the clause 2(a)(ii) as reproduced above, which prescribes 14 years of actual sentence and 20 years of total sentence including remissions. Since in the case in hand, the petitioner has already undergone more than 17 years and 09 months of actual sentence and more than 21 years and 06 months of total sentence including remission, which could not be disputed by the learned counsel for the State, the present petition deserves to be accepted. It has also come in the reply that the petitioner has already been punished for absconding from parole.

So far as the plea of learned counsel for the State that the petitioner absconded from the parole for more than 03 years and 11 months is concerned, it is not disputed that the petitioner has already been punished for that by awarding sentence. Moreover, in “**Kamal Kant Tiwari Versus State of Punjab and Others**” 2014 (2) RCR (CR) 940, this court has held that jail offence committed by life convict not to be taken into consideration while considering his case for grant of pre-mature release as the convict will have to face consequences for jail offence separately. In “**Subhash Versus State of Haryana**” 1994(3) RCR (Criminal) 489, this Court has held that commission of jail offences is no legal ground to deny premature release

which became due especially when convict had already been punished for jail offences.

In view of the above, the present petition is allowed, as prayed for. The respondent authorities are directed to consider the application dated 09.08.2019 (P-4), submitted by brother of the petitioner for releasing the petitioner prematurely, and decide the same by passing a speaking order thereon in the light of observations made above, within a period of one month from the date of receipt of certified copy of this order, failing which, the petitioner will be released to the satisfaction of District Magistrate, Gurugram on usual terms and conditions.

**25.02.2022**  
**mks**

**(SANT PARKASH)**  
**JUDGE**

Whether Speaking/Reasoned: YES / NO  
Whether Reportable: YES / NO