

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

CRWP-1625-2020

Date of Decision:24.02.2022

Surender

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Sanjiv Gupta, Advocate,
for the petitioner.

Mr. Amreek Singh Narwal, DAG, Haryana.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

SANT PARKASH, J.

The petitioner has filed the present petition under Article 226 of the Constitution of India for issuance of writ in the nature of mandamus directing the respondents to release the petitioner prematurely in view of the Govt. Policy dated 12.04.2002 (Annexure P-2).

The petitioner was arrested in case FIR No.18 dated 01.02.1994 under Sections 302/304/307 of the Indian Penal Code, 1860 registered at Police Station G.R.P. Rohtak. The petitioner was convicted for the offence under Sections 302/394/397 IPC by the Court of learned Additional Sessions Judge, Rohtak vide judgment dated 08.12.1995 and he was sentenced to life imprisonment vide order dated 12.12.1995.

The petition has been opposed by the respondents/State in terms of reply filed by way of affidavit of Sewa Singh, Deputy Superintendent Jail, Rohtak.

Learned Counsel for the petitioner has contended that as per the policy of the Haryana Government dated 12.04.2002 (P-2), the petitioner is entitled for pre-mature release. He has further contended that the petitioner has already undergone more than 14 years of actual sentence and more than 16 and 09 months of sentence including remissions. Further detention of the petitioner is illegal and against the said Govt. policy and violation of Article 21 of the Constitution of India. He has placed reliance on a judgment dated 24.07.2003 passed by this Court in **CRM-M-30109-M-2002 (Mahender Singh and others Vs State of Haryana and others)**.

Finally, learned Counsel for the petitioner has prayed that the petitioner has already undergone the sentence as per policy dated 12.04.2002 and in view of the same, the present petition be accepted and the petitioner be set at liberty forthwith.

On the other hand, learned State Counsel has strongly opposed the present petition on the ground that the petitioner had committed a heinous crime. He had murdered one Purshotam by giving knife blows and robbed the money. He next submitted that the date of conviction of the petitioner is 08.12.1995, therefore, the premature policy dated 04.02.1993 would be applicable in his case. As per the offence committed by the petitioner, his case falls within clause 2(a) of the policy dated 04.02.1993, which prescribes completion of 14 years' of sentence and not less than 20 years with remissions. He further submitted that during the pendency of appeal before this Court against the judgment of his conviction, he was released on 04 weeks parole from jail on 25.05.2000 with a direction to surrender on 23.06.2000 but he absconded from parole. On 06.09.2000, this Court acquitted the petitioner/convict. Against the judgment of this Court, the State Government preferred an appeal before Hon'ble the Supreme

Court, which was accepted and the life imprisonment was upheld vide order dated 01.06.2007. He further submitted that the petitioner did not surrender before the jail authorities and remained enlarged from judicial custody for about 07 years.

This Court has heard the learned counsel for the parties and perused the case file.

Now the first and foremost question required to be adjudicated before this Court is as to which policy would be applicable to the present petitioner. It is pertinent to mention here that at the time of conviction of petitioner, the Premature Release Policy dated 04.02.1993 was in existence.

Hon'ble Apex Court in its judgments passed in **Criminal Appeal No. 566 of 2010 (Arising out of SLP (Crl.) No. 6638 of 2009** titled as **“State of Haryana and Ors. Vs. Jagdish”** decided on 22.03.2010, reported as **2010(4) SCC 216** and **Criminal Appeal No. 30 of 2005** titled as **“State of Haryana Vs. Mahender Singh and Others”** decided on 02.11.2007, reported as **2007(4) RCR (Criminal) 909**, has held that for grant of remissions, the life convict would be governed by the policy of remissions prevailing on the date of the judgment of conviction and not by the policy which existed on the date of consideration of his premature release. Also, in case a liberal policy prevails on the date of consideration of the case of a “lifer” for pre-mature release, he should be given the benefit thereof.

In view of the above referred judicial precedents, this fact 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. 08.12.1995, the prevailing policy for pre-mature release of convicts was Premature Release Policy dated 04.02.1993. As per this policy, for considering the case of premature release, the condition required for life convict was to undergo 14 years of actual sentence including under-trial period provided of such sentence including remissions is not less than 20 years.

From the perusal of the reply dated 13.02.2020, the petitioner has undergone 12 years and 27 days of actual sentence and including remissions he has undergone more than 14 years. Though, as on today, i.e. at the time of decision of the case, the petitioner has undergone 14 years, 03 months and 24 days of actual sentence and more than 16 years and 09 months with remissions, which could not be disputed by the State counsel.

In **Mahender Singh's** case (supra), this Court observed that the petitioners had been found guilty for the commission of three murders. However, the imprisonment for life was imposed on each one of them by the trial court on three counts. The said imprisonment awarded on three counts was ordered to run concurrently. So, no discrimination could be done on the basis of classification of two murders or three murders. There was no valid basis for the classification because Article 14 of the Constitution of India provides equality before law. It was also held that the provision of the policy is discriminatory and violative of Articles 14, 19 and 20 of the Constitution of India.

In similar circumstances, this Court in judgment dated 01.02.2011 (**Jai Parkash Billu Vs State of Haryana and others**), the petitioner, who was convicted and sentenced in FIR registered under Sections 302/364/377/511 IPC has released the petitioner on completion of

14 years of actual sentence despite the requirement as per the prevalent policy was that the petitioner had to undergo 20 years of total sentence including 06 years of remissions.

So far as the issue regarding absconding of petitioner from parole is concerned, this Court in “**Kamal Kant Tiwari Versus State of Punjab and Others**” 2014 (2) RCR (CR) 940, 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 the case in hand, the policy dated 04-02-1993 is applicable and as per clause 2 (a) thereof, the petitioner had to undergo 14 years of actual sentence and 20 years of total sentence including remissions on account of the fact that offences alleged to have been committed by him are covered under the said clause. Such distinction made in the policy is totally arbitrary and has certainly caused hardship to the petitioner, who has undergone more than 14 years, 03 months and 24 days of actual sentence and more than 16 years and 09 months with remissions. Thus, it can safely be held that as per the judgment passed in **Mahender Singh’s** case (supra), the offence committed by the petitioner does not fall under the heinous category for the reason that if a convict is involved in the murder of more than two persons, even then he is to be considered for pre-mature release and the case in hand the petitioner has been convicted for commission of one murder. Therefore, the petitioner in this case was required to be treated at par and he is held entitled to the same/similar treatment for the purpose of premature release. Consequently, the case of the petitioner is liable to be considered under clause 2(b) of the policy, which prescribes 10 years of

actual sentence and 14 years of total sentence including remissions. Since the petitioner has now already undergone more than 14 years of actual sentence, which could not be disputed by the learned counsel for the State, the present petition deserves to be accepted. .

In view of the above, the present writ petition is allowed. The petitioner be set at liberty forthwith, if is not required in any other case.

24.02.2022
mks/avin

(SANT PARKASH)
JUDGE

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