

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

CRWP-1720-2020

Date of decision : 19.12.2022

Daljit Singh @ Balli

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Sarabjit Singh Cheema, DAG, Punjab.

PANKAJ JAIN, J. (ORAL)

Present writ petition has been filed seeking directions to the respondents to grant pre-mature release of the petitioner in case FIR No.127 dated 23rd of April, 2005 registered for the offences punishable under Sections 302, 34, 120-B IPC, at Police Station Nakodar, District Jalandhar.

2. Ld. Counsel for the petitioner submits that the petitioner was tried with Satnam Singh @ Satta, who is the principal accused and was attributed gun-shot injury which resulted in the death of deceased Surinderjit Singh. The only allegation against the petitioner was that he waited for the main accused Satnam Singh @ Satta outside the house of the deceased while he was committing crime. The principal allegation is against Satnam Singh @ Satta yet he has been ordered to be released vide Annexure P-2 by resorting to the Pre-mature Release Policy of the State

dated 8th of July, 1991 framed with an intent to grant remission of sentence to the life convicts under Sections 432, 433 and 433-A of the Code read with Article 161 of the Constitution of India. However, in the case of the petitioner the authorities have not granted similar concession despite the fact that the case of the petitioner *viz-a-viz* allegations levelled against him is placed at better footing as compared with that of Satnam Singh @ Satta.

3. Reply on behalf of respondents No.1 to 4 has been filed. Grant of concession to Satnam Singh @ Satta is not denied. Application of Policy dated 8th of July, 1991 in the present case is also not bone of contention. However, the reasoning is that since the petitioner was also punished for offence punishable under Section 120-B IPC in addition to Section 302 IPC, his case would fall within the category of heinous crime and, thus he would fall within Category 'B'.

4. Having heard counsel for the parties and after going through the records of the case, this Court is of the considered opinion that the reasoning given by the State Authorities is bereft of any logic. Authorities have failed to apply their mind that the petitioner has not been convicted for offence punishable under Section 302 and Section 120-B IPC but has been convicted for offence punishable under Section 302 read with Section 120-B IPC meaning thereby that his conviction and guilt for offence punishable under Section 302 IPC has been brought on book by taking aid of Section 120-B IPC. Having held so the question would arise for consideration is *'as to whether petitioner falls within category 'B' or 'C'.*

5. It will be apt to peruse the Policy which reads as under :

No:1/889/88-1H7/23526
GOVERNMENT OF PUNJAB
DEPARTMENT OF HOME AFFAIRS AND JUSTICE
(HOME-7 BRANCH)

- To
1.

The inspector General of Prisons Punjab,
Chandigarh
2.

All the District Magistrate in the state
3.

All the Senior Supdt. Of Police in the state

Dated, Chandigarh, the 8th July 1991

Subject : Policy for grant of remissions of sentences of life imprisonment under Section 432, 433 and 433(A) of the code of criminal procedure and article 161 of the constitution of India.

Sir,

I am directed to refer to the subject noted above and to say that the matter regarding review of policy for the grant of remissions of sentences of life imprisonment under section 432, 433 and 433(A) of the code of criminal Procedure and Article 161 of the constitution of India, has been under the consideration of the state Government for some time and after deliberating upon all the relevant aspects, the Government have decided as under :-

(i)

Minimum period of imprisonment to be undergone for a convict before consideration of application for exercise of powers of the Government under Article 161 of the constitution.

Case will be considered by the Government for grant of remission after the following periods of imprisonment are undergone by the convict :-

(Period In Years)

A		B		C		D		E	
For convicts whose death sentence has been commuted to life imprisonment		Convicts who have been imprisons for life for offence for which death is a punishment and have committed heinous crime		Convicts who have been imprisoned for life for offence for which death is a penalty but crimes are not considered heinous		Other life convicts imprisoned for life for offence for which the death penalty is not punishment and have committed heinous crimes		Other lifer convicts	
Actual Imprisonment	Imprisonment with remission	Actual Imprisonment	Imprisonment with remission	Actual Imprisonment	Imprisonment with remission	Actual Imprisonment	Imprisonment with remission	Actual Imprisonment	Imprisonment with remission
14	20	12	18	10	14	10	14	8 ½	14
10	14	8	12	8	12	8	12	6	10

A. Heinous crime with reference to column 'B' of 1(I) above are defined as follows :-

- (i) Offence under section 302 alongwith 347 of the IPC i.e. Murder with wrongful confinement for extortion
- (ii) Section 302 with 375, i.e. murder rape.
- (iii) Offence under section of IPC i.e. dacoit with murder.
- (iv) Offence under section 302 alongwith offences under the Terrorist and Disruptive Activities (Prevention) Act 1987.
- (v) Offence under Section 302 alongwith offence under the untouchability (offence) act 1955.
- (vi) Offence under section 302 where murder has been committed in connection with any dispute over dowry and this is indicted 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 IPC Heinous crime with reference to column 'D' of the revised policy are defined as follows:-
 - (i) Offence under section 304(B) of the IPC, i.e. a 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 offence under the terrorist and disruptive homicide Activities (Prevention act 1987)
 - (v) Offence under section 304 alongwith culpable homicide has been committed in connection with any dispute on dowry and this is indicted 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 the above crime.

B. Adults are defined as persons above the age of 18 years,

- (II) The case of premature release will only be considered provided the convict has maintained good conduct in jail, for this purpose good conduct means that he has not committed any jail offence for a period of 5 years prior to the date of his eligibility for consideration for release as per para 1.1 above.
- (III) Cases for premature release will only be considered if the Government is satisfied that in the event of release of the convict there is no likelihood of the convict committing a crime or breach of peace in any way connected with the circumstances of the crime for which he was originally convicted.
- (IV) The Government reserves the right to exercise its powers under Article 161 of the constitution in any way it deems fit.

2. procedure to be followed:

- a. On becoming eligible for consideration for premature release under article 161 of the constitution as per para-1 of the policy the convict must submit a petition to the Governor indicating the grounds on which he desired case to be considered for premature release.
- b. The state Government shall refer the petition to the inspector general of prisons for preparing the case in the prescribed format for verification of details of imprisonment as well as for a report of good behaviour.

- (iii) A copy of the petition shall simultaneously be

forwarded to the District Magistrate for a verification of the contentions made in the petition and a report regarding the likelihood of commission of breach of peace of crime by the convict which is connected with the circumstances of the crime originally committed by him. For this purpose, inter-alia, the following will be taken into account :-

- a. The behaviour of the convict during periods of parole.
- b. The views of the local panchayat

The actual verification and report regarding likelihood of commission of breach of peace or crime shall be made personally by the concerned station house officer and the report shall be sent under his signatures to the district SP (SSP). Further the District SP (SSP) shall forward it under his own signatures to the District Magistrate who shall further send it to the Government under his own signature. These duties shall not be delegated by the District Magistrate and the District SP (SSP) and the SHO.

(iv) on receipt of the report from the IG Prisons as well as the District Magistrate the state Government will decide the petition in accordance with the policy laid down.

3. As regards the policy for dealing with premature release under Sections 432 and 433, this will be identical to the policy proposed for deciding cases under Article 161 of the constitution, with the following difference :-

The minimum period of actual imprisonment to be undergone before a case for premature release is considered will be as follows:-

A		B		C		D		E	
For convicts whose death sentence has been commuted to life imprisonment		Convicts who have been imprisons for life for offence for which death is a punishment and have committed heinous crime		Convicts who have been imprisoned for life for offence for which death is a penalty but crimes are not considered heinous		Other life convicts imprisoned for life for offence for which the death penalty is not punishment and have committed heinous crimes		Other lifer convicts	
Actual Imprisonment	Imprisonment with remission	Actual Imprisonment	Imprisonment with remission	Actual Imprisonment	Imprisonment with remission	Actual Imprisonment	Imprisonment with remission	Actual Imprisonment	Imprisonment with remission
14	20	14	20	14	20	10	14	8 ½	14
14	20	14	20	14	20	8	12	6	10

As regards procedure it would nor be necessary for the convict to submit his petition on completion of the required number of years of actual imprisonment. The IG Prisons would send the case of the concerned convict to Government on or after the eligibility date which would then obtain the report of the District Magistrate and take appropriate decision.

As regards the prisoners convicted before 18.12.1978, the minimum

periods of actual imprisonment will be the same of the constitution as in para 1.I above.

4. This policy will supersede instructions contained in the following Government circulars :-

- i. Memo No.:13311-6JJ-71/39656, DATED 10.11.1971
- ii. Memo No:403-6JJ-76/3456, DATED 30.01.1976
- iii. Memo No:2874-6JJ-77/17811, DATED 12.05.1977
- iv. Memo No:8530-6JJ-78/21318, DATED 9.6.1978
- v. Memo No:12/456/81-5JL/22279, DATED 3.12.1982
- vi. Memo No:12/152/83-5J/32987, DATED 12.12.1985
- vii. Memo No: 12/49/84-4J/34888-90. DATED 29.12.1986

Para 516-B of The Punjab Jail Manual will be deemed to have been amended accordingly.

(B.D. Aggarwal)
Joint Secretary Home (B)

No. 1/889/88-1h7/23527 Dated Chandigarh, 8th July 1991

A copy is forwarded to all the Superintendents of Central and District Jails in the State for information and necessary action.

(B.D. Aggarwal)
Joint Secretary Home (B)

No. 1/889/88-1h7/23528 Dated Chandigarh, 8th July 1991

A copy is forwarded to the advocate General Punjab Chandigarh for information.

(B.D. Aggarwal)
Joint Secretary Home (B)

A copy is forwarded to the Chief Secretary to Government Punjab (in Cabinet Affairs Branch) for information with reference to his U.O. no.:1/69/91-cabinet/927, dated 1st july 1991

(B.D. Aggarwal)
Joint Secretary Home (B)

To

The Chief Secretary to Government,
Punjab (in Cabinet Affairs Branch).

I.D. No. 1/889/88-1h7/23528 Dated Chandigarh, 8th July 1991”

6. Heinous crimes w.r.t. Column 'B' have been enlisted in the Policy itself. Likewise the convictions under Section 120-B IPC w.r.t. Column 'D' has also been enlisted therein which read as under :

“A. Heinous crime with reference to column 'B' of 1(I) above are defined as follows :-

- (i) Offence under section 302 alongwith 347 of the IPC i.e. Murder with wrongful confinement for extortion

- (ii) Section 302 with 375, i.e. murder rape.
- (iii) Offence under section of IPC i.e. dacoit with murder.
- (iv) Offence under section 302 alongwith offences under the Terrorist and Disruptive Activities (Prevention) Act 1987.
- (v) Offence under Section 302 alongwith offence under the untouchability (offence) act 1955.
- (vi) Offence under section 302 where murder has been committed in connection with any dispute over dowry and this is indicted 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 IPC Heinous crime with reference to column 'D' of the revised policy are defined as follows:-
 - (i) Offence under section 304(B) of the IPC, i.e. a 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 offence under the terrorist and disruptive homicide Activities (Prevention act 1987)
 - (v) Offence under section 304 alongwith culpable homicide has been committed in connection with any dispute on dowry and this is indicted 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 the above crime.”

7. Ld. State Counsel has not been able to point out as to in which of these categories the case of the petitioner would fall to say that the petitioner is not covered under Column 'C'. The Policy itself is a self explanatory. Trite it is that once the policy decision has been taken by the State, it cannot be allowed to deviate therefrom. Even the reply does not

demonstrate as to how the case of the petitioner falls within Category 'B' of the Policy.

8. Keeping in view the aforesaid fact, respondents are directed to consider the case of the petitioner for pre-mature release strictly in terms of Policy dated 8th of July, 1991 (Annexure P-4) within a period of 30 days from the date of receipt of certified copy of this order.

8. Needless to say, in case the respondents still feel that the petitioner is not entitled for the relief, they will be required to pass a Speaking Order declining the relief to the petitioner by considering the Policy as well as the relief granted in the case of Satinder Singh @ Satta.

9. Disposed off accordingly.

December 19, 2022
Dpr

(PANKAJ JAIN)
JUDGE

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