

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-2563-2021 (O&M)
Date of decision: 25.02.2022

Manoj Kumar
...Petitioner
Versus
State of Haryana & others
...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Manoj Swarup, Sr. Advocate with
Mr. Rose Gupta, Advocate
for the petitioner.

Mr. Rajat Gautam, DAG, Haryana.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
699	24.11.2000	City Hisar, District Hisar	302/452/324/506 IPC

Criminal Case no. before trial Court	61 of 2001
Case no. before High Court	CRA No.556-DB-2002
Case no. before Supreme Court	SLP (Crl) No.8589-2010

Challenging the rejection of premature release on completion of fourteen years of imprisonment, the petitioner who was arrested, prosecuted, convicted, and sentenced to imprisonment for life in the above-captioned case FIR, has come up before this Court.

2. Earlier on two occasions, the petitioner had approached this court, vide CRWP-57-2017, CRWP-1332-2019, against the orders of rejection of his premature release. Both times, the court had asked the competent authority to re-consider his case afresh.

3. This time again, the request went in vain and aggrieved by the impugned order dated 28-04-2020, Annexure P-15, vide which his representation for premature release

was rejected, he has come again before this court. The Additional Chief Secretary to Govt. of Haryana, while rejecting the representation, mentions that the convict had undergone fourteen years, one month, and 21 days of the actual sentence. The reasons for rejection are mentioned in paragraph 4 onwards, which are extracted as follows:-

“4. This life convict had murdered the victim, who was 72 years old and also injured two others without any concrete motive. He had absconded from furlough for 04 years, 09 months and 02 days from 07.04.2005 to 09.01.2010. The prisoner had indulged in heinous crimes on regular basis and eleven other criminal cases were registered against him as per detail mentioned above. Out of these cases, four criminal cases were lodged against the convict when he had absconded from furlough and four criminal cases were registered during his confinement in the jail. Thus, the convict had shown persistent bad conduct in the prison. This convict is also a danger to public safety and his release would not be in public interest. He had indulged in criminal offences even after his life sentence in the present case. Thus, this Convict has not shown any inclination for reformation and rehabilitation.

5. The premature release case of this life convict is covered under para 2(a) (xi) and (xii) of the Premature Release Policy dated 12.04.2002 by which he is required to undergo 14 years actual sentence and 20 years total sentence, before his case can be considered for premature release. He has undergone 14 years, 01 month and 21 days actual sentence and 18 years, 06 months and 25 days total sentence, as on 14.01.2020. Moreover, as per the premature release policy, no convict has fundamental right of remission or shortening of sentence. In fact, these are privileges granted by the State to the convicted prisoners. The State Government in exercise of its executive/discretionary power of remission, is to consider each individual case keeping in view all the relevant factors.

After agreeing with the recommendation of the State Level Committee, the premature release case of this life convict will be re-considered after completion of 14 years actual sentence and 20 years total sentence, as per Para 2(a)(xi) and (xii) of the premature release policy dated 12.04.2002.”

4. The grounds of the writ petition mentioned in Para 18 are extracted as follows:

- “i. Petitioner acquitted in all cases and after acquittal, the reasons given in the order do not survive.*
- ii. Two cases bearing FIR No.69 dated 18.04.2005 under Sections 8/9 of Haryana Good Conduct of Prisoners (Temporary Release) Rules, 1988 sentenced to imprisonment has been undergone by him and in case FIR No.20 dated 08.01.2010 under Section 174-A IPC, Police Station Tohana, wherein also he was sentenced to undergo imprisonment has been undergone by him.”*

5. The State had filed a reply to the petition, and it did not dispute that the petitioner was acquitted in the cases referred above. However, on 28-10-2021, Ld. Counsel for the State wished to file a fresh reply. Consequently, the State filed a short reply dated 09-11-2021 through the Inspector General of Prisons. It would be necessary to extract the admissions made in the reply, which reads as follows: -

".... the detail of the sentence undergone by the petitioner as on 03.11.2021 is as under:-

Sr. No.	Particulars	Period	Years	Months	Days
1.	Undertrial period	From 20.02.2001 to 09.07.2002	01	04	20
2.	Conviction period	From 10.07.2002 to 03.11.2021	19	03	24
Total			20	08	14
3.	Overstay/absent period from furlough/ parole(-)		04	09	02
Actual sentence =			15	11	12
4.	Remission earned(+)		07	00	09
	Total		22	11	21
5.	Parole availed (-)		02	09	29
Total sentence			20	01	22

As per detail given above, now the petitioner has undergone 14 years actual sentence and 20 years total sentence including remission after deducting parole period. Thus, as per para 2(a)(xi)(Persistent bad conduct in the prison) and (xii)(danger to public safety) of the premature release policy dated 12.04.2002, the petitioner is eligible to be considered for premature release. Accordingly, the Superintendent, District Jail, Sirsa, vide letter No.850 dated 03.11.2021, has sent the case of premature release of the petitioner to the office of the Director General of Prisons, Haryana, for onward submission before the State Level Committee. The case is under scrutiny in the office of the Director General of Police, Haryana (sic) meeting, which is likely to be held shortly and the whole process may take almost two months time due to lengthy procedure."

6. Needless to say, that while reckoning criminal history, the prosecutions resulting in acquittal or discharge or when Courts quashed the FIR, as such those cases cannot be considered as criminal history. Since the State itself has decided to reconsider the premature release application of the petitioner, coupled with the fact that in the previous order, even those cases were considered of criminal history in which the petitioner was acquitted, as such, the impugned order cannot sustain and resultantly quashed. Given this, while reconsidering the premature release application of the petitioner, the authorities shall not consider those cases which fall in the category mentioned above.

7. As per the above-mentioned stand of the State, the process was likely to conclude in approximately two months, i.e., by mid-January 2022. The matter stands reserved for long, and the State has not imparted any instructions in this regard.

8. Thus, in the entirety of facts and circumstances peculiar to this case, if the decision is yet not finalized *qua* the pre-mature release of the petitioner, he shall be released on parole within a week and the parole would continue till the date of such

decision. However, the grant of parole shall be strictly subject to the conditions mentioned in this order.

9. Given the nature of allegations and the other circumstances peculiar to this case, the petitioner/accused shall surrender all weapons, firearms, ammunition, if any, and the arms license to the concerned authority within ten days from release from prison or within ten days from today, whichever is earlier, and inform the SHO of the police station, which has jurisdiction over the petitioner's residence about the compliance. However, if the police chief of the concerned district, (S.P./S.S.P/Commissioner), gives written permission by passing a reasoned order to arrive at such a decision to retain the firearms and license and in that case, this condition shall not be applicable. If the petitioner does not have such licence, then no such permission should be granted to acquire firearms and ammunition. However, if the police chief of the concerned district (S.P./S.S.P/Commissioner) gives written permission through a reasoned order to get the firearms and license, then this condition shall not be applicable.

10. The petitioner shall not contact, call, text, message, remark, stare, stalk, make any gestures or express any unusual or inappropriate, verbal or otherwise objectionable behavior towards the victim's family, either physically, or through phone call or any other social media, through any other mode, nor shall unnecessarily roam around the victim's home.

11. Petition is allowed to the extent mentioned above. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

February 25, 2022
AK

Whether speaking/reasoned: Yes
Whether reportable: No.