

**266 IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRWP-2588-2022

Date of Decision: 27.10.2022

Lekh Raj

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE NAMIT KUMAR

Present:- Mr. Akshay Rana, Advocate
for the petitioner.

Mr. Ravinder Singh, AAG, Punjab.

NAMIT KUMAR, J. (ORAL)

The instant petition has been filed by the petitioner for issuance of writ in the nature of certiorari for quashing the order dated 12.07.2021(Annexure P-2) whereby his case for grant of premature release has been rejected by the respondents.

2. Brief facts of the case as pleaded in this petition are that the petitioner was arrested along with co-accused in case FIR No.23 dated 03.03.2003 for offences under Sections 302, 460, 454, 455, 379 read with Section 149 IPC, registered at Police Station Lalru, District Patiala. After being tried, the petitioner as well as the co-accused were sentenced to undergo life imprisonment vide judgment dated 24.07.2007 passed by Learned Additional Sessions Judge, Patiala. Criminal Appeal No.824-DB of 2007 preferred by the petitioner was dismissed by the High Court vide its judgment dated 17.11.2009. Learned counsel for the petitioner has referred to the Punjab Government Instructions dated 08.07.1991(Annexure P-1) regarding premature release as per which, a convict who is not involved in a heinous crime is

entitled to be considered for grant of premature release after undergoing 12 years of actual sentence and 18 years of sentence with remissions. It is submitted that the petitioner has undergone an actual sentence of more than 17 years and a total sentence of 25 years inclusive of remissions as per the Government Instructions dated 08.07.1991. It is further submitted that the petitioner fulfilled all the pre-requisites for grant of pre-mature release in terms of the Government instructions, therefore his case for grant of pre-mature release was initiated by respondent No.3 and was sent to respondent No.4 for obtaining reports from the local police but however, respondent No.4 did not recommend the case of the petitioner after considering the reports received from Senior Superintendent of Police, Shahjahanpur(Uttar Pradesh), on the ground that the petitioner can commit crime in future in case, he is released pre-maturely, although no specific reason was assigned. Thereafter, when no action was taken by the respondents, the petitioner filed CRWP-10139-2020 which was disposed of by this Court vide order dated 22.12.2020 to consider his case for grant of pre-mature release within a period of six weeks. Since, the said order was not complied with, the petitioner filed COCP-840-2021 and during the pendency of the above said contempt petition, the case of the petitioner for grant of pre-mature release has been considered and rejected vide order dated 12.07.2021 by stating that the competent authority-Hon'ble Chief Minister of Punjab, while exercising the powers under Section 432(2) Cr.P.C, 1973 has rejected the pre-mature release case of the petitioner after considering all the records/non-recommendation reports of the concerned District Magistrate/Police officials and the non-recommendation report submitted by the Additional Director General of Police(Jails), Punjab and after considering

all other relevant facts.

3. On issuance of notice of motion, the State of Punjab has filed the reply by way of affidavit of Ramandeep Singh Bhangu, PPS, Superintendent, New District Jail, Nabha on behalf of respondent Nos. 1 to 3, wherein the stand taken in the impugned order dated 12.07.2021 has been reiterated and prayed for dismissal of the present petition. Further in para 8 of the said reply, it has been stated as under:-

“8. That now the petitioner is eligible for premature release and the premature release case of the petitioner was initiated by office of deponent vide office letter no. 9590/W dated 22.08.2022, addressed to the District Magistrate, Shahjahanpur, Uttar Pradesh for obtaining necessary police report/verification report regarding recommendation/non-recommendation for the premature release of the petitioner.”

4. I have heard learned counsel for the parties and have gone through the pleadings of the case with their assistance.

5. Learned counsel for the petitioner has argued that the impugned order is totally non-speaking as no reasons have been assigned while rejecting the claim of the petitioner for pre-mature release. Learned counsel for the petitioner further places reliance upon the decision of the Co-ordinate Bench in CRWP-394-2021 titled as *Bhim Singh vs. State of Punjab and others* decided on 21.02.2022, which was disposed of with the following directions:

“In the light of facts noticed above and the position of law, I am of the view that impugned order dated 24.12.2020 passed by the Principle Secretary, Government of Punjab, Jail Department, suffers from hypothetical conjectures and is not based upon any valid foundation. It further fails to indicate any reason as to why the case of the petitioner ought not to be treated at par with other accused-Dhan Singh to whom similar concession has been extended under similar circumstances. The impugned order dated 24.12.2020 (Annexure P-2) is accordingly set aside. State is directed to reconsider the case of the petitioner ignoring the

recommendation that the petitioner is likely to commit crime again and to pass a fresh reasoned and speaking order within a period of two months from the date of receipt of certified copy of this Order. It is further directed that if the Government is unable to decide the case of the petitioner within the aforesaid period of two months, the petitioner shall be released on interim parole till the time that his case is decided on merits. Hence, the petition is allowed.”

Reference has been made to the judgment dated 11.01.2019 passed in CWP No.14413 of 2018 in the case of the co-accused Dhan Singh in case titled as *Dhan Singh Vs. State of Punjab and others*. It is argued that the case of the co-accused was identically placed and that his prayer of pre-mature release was also rejected vide an identical order by placing reliance upon non-recommendation by the Senior Superintendent of Police, Shahjahanpur.

6. Having considered the rival contentions of the parties and having gone through the impugned order, I am of the view that the same is not sustainable in law.

7. Section 432 deals with the power of the appropriate Government to suspend or remit sentences. The Government of Punjab framed a policy dated 08.07.1991 for grant of remissions of sentences of life imprisonment under Sections 432, 433, 433(A) of the Code of Criminal Procedure. For the purposes of considering the case of a convict, his/her conduct in jail for the preceding 5 years has to be seen. The case is to be considered upon the Government being 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. The relevant provisions read as thus:-

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

"(ii) The cases of premature release will only be considered provided the convict has maintained good conduct in jail. For this purpose good conduct means that

he' or 'she' has not committed any jail offence for a period of five years prior to the date of the eligibility for consideration for release as per para 1.1 above.

(iii) Case 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 anyway connected with the circumstances of the crime.

2. Procedure to be followed:-

(iii) A copy of the petition simultaneously be forwarded to the District Magistrate for the verification of the contentions made in the petition and a report regarding the likelihood of commission of breach of peace for crime by the convict which is connected with the circumstances for the circumstance of the crime originally committed by him. For this purpose inter-alia, the following will be taken 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 of crime shall be made personally by the concerned station house officer and the report shall be sent under his signatures to the District S.P (SSP). Further the district S.P. (SSP) shall forward it under the own signature to the District Magistrate through own signatures to the District Magistrate who shall further sent it to the Government under his own signatures. These duties shall not be delegated by the District Magistrate and the District S.P. (SSP) and the SHO.

2(iv) On receipt of the report from the I.G Prisons as well as the District Magistrate, the State Government will decide the petition in accordance with the policy laid down.”

8. A perusal of the policy shows that concerned Government should have satisfied itself that there is no likelihood of a convict committing the crime or breach of peace in the event of a premature release.

9. A perusal of the impugned order dated 12.07.2021(Annexure P-2) shows that the competent authority has not assigned any valid reason while rejecting the claim of the petitioner for pre-mature release in terms of the policy dated 08.07.1991(Annexure P-1). It has merely been stated that the case of

grant of pre-mature release of the petitioner was placed before the Hon'ble

Chief Minister of Punjab, under Section 432(2) Cr.P.C., 1973 after presenting all the facts and circumstances of the case and the competent authority-Hon'ble the Chief Minister of Punjab while exercising the powers under Section 432(2) Cr.P.C., 1973 has rejected the same, after considering all the records/non-recommendation reports of the concerned District Magistrate/Police officials and the non-recommendation report submitted by the Additional Director General of Police(Jails), Punjab and after considering all other relevant facts.

10. It is also not in dispute that the case of co-accused Dhan Singh was also declined by the appropriate Government for the same reasons and that the said order had been set aside vide judgment dated 11.01.2019 passed in *CWP No.14413 of 2018 titled Dhan Singh Vs. State of Punjab and others (supra)*. The case of the petitioner is at par with Dhan Singh to whom concession of the pre-mature release was extended by the respondent-State vide order dated 23.07.2020. Needless to mention that the petitioner has remained in custody for a period of more than 17 years without any complaint and as such, there is no valid basis to assume that the petitioner has not reformed or that he is more prone to commission of criminal acts in the event of being grant of benefit of pre-mature release.

11. Further, this Court in the matter of *Darshan Singh Vs. State of Punjab and another reported as 1990 (2) RCR (Crl.) 1*, held that vague allegations regarding possible apprehension of breach of peace or indulgence in referring criminal act are of no consequence in withholding the concession. Such apprehension can be duly addressed by incorporating adequate safeguards in the order granting premature release. The relevant extract of the judgment in the matter of ***Darshan Singh's case (Supra)*** is as under:-

"The law is well settled on the point that vague allegations regarding the apprehension of breach of peace on the premature release of a life convict are of no consequence in withholding such concession. The Apex Court in Bhagwat Saran vs. State of UP, 1983 (1) Chandigarh Law Reporter 504 has settled this controversy as under:

"After hearing counsel on either side and considering the affidavit of the respondents filed herein we are satisfied that it is a case where the Committee's recommendations should have been accepted by the Government. The Committee had recommended the release of these prisoners after taking into consideration the behaviour inside the jail as well as other factors. The only ground given by the State in the counter affidavit is that "after considering their cases sympathetically, keeping in view of the law and order situation they cannot be released." A bald statement like that without any attempt to indicate how law and order is likely to be adversely affected by their release cannot be accepted. In fact there are no reasons why recommendations could not be accepted. We direct that the petitioners be released forthwith."

8. Moreover, the remote apprehension of breach of peace at the hands of released prisoner can be well safeguarded by demanding heavy surety bond by the concerned authority."

12. In addition thereto the State has not been able to distinguish how the case of the petitioner is distinct and separate from that of the co-accused Dhan Singh and Bhim Singh and why a similar concession be not extended to the petitioner on the grounds of parity.

13. In the light of facts noticed above and the position of law, I am of the view that impugned order dated 12.07.2021(Annexure P-2) passed by the Principal Secretary, Government of Punjab, Jail Department, suffers from perversity and based on invalid reasons. It further fails to indicate any reason as to why the case of the petitioner ought not to be treated at par with other accused-Dhan Singh and Bhim Singh to whom similar concession has been extended. The impugned order dated 12.07.2021 (Annexure P-2) is accordingly set aside. State is directed to reconsider the case of the petitioner and to pass a

fresh reasoned and speaking order within a period of two months from the date of receipt of certified copy of this order, in view of the directions issued by this Court in CRWP-394-2021 decided on 21.02.2022 in case of Bhim Singh (Annexure P-3). It is further directed that if the Government is unable to decide the case of the petitioner within the aforesaid period of two months, the petitioner shall be released on interim parole till the time that his case is decided on merits. Hence, the petition is allowed in the above terms.

October 27, 2022
P.Bhatt

(NAMIT KUMAR)
JUDGE

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