

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRWP-3201-2021

Date of decision: 7 th March, 2022

Julfan

.....Petitioner

Versus

State of Haryana and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Argued by: Mr. Hoshiar Singh Jaswal, Advocate
for the petitioner.

Mr. Amreek Singh Narwal, DAG, Haryana

SANT PARKASH, J.

(The case has been taken up for hearing through video conferencing).

1. The petitioner has filed the present petition under Article 226/227 of the Constitution of India for quashing/setting-aside the impugned order dated 08.01.2021 (Annexure P-3) passed by respondent No. 1 deferring the premature release case of the petitioner for two years with a further prayer directing the respondents to re-consider the case of the petitioner afresh under the policy/instructions of Haryana Government dated 12.04.2002 (Annexure P-2) applicable at the time of his conviction.

2. The petitioner along with other co-accused was arrested in case FIR No. 36 dated 12.03.2006 under Sections 120-B, 302, 323, 365 and 508 of the Indian Penal Code, 1860 registered at Police Station

Buria, District Yamuna Nagar. The petitioner was tried for the aforesaid offences and after completion of trial, the petitioner was convicted and sentenced to undergo imprisonment for life by the Court of learned Additional Sessions Judge Yamunanagar vide order dated 12.12.2007.

3. Feeling aggrieved, the petitioner assailed the aforesaid judgment by filing appeal CRA-D-516-DB-2008 which was also dismissed vide order dated 23.01.2012.

4. The petition has been opposed by the respondents/State in terms of reply filed by way of affidavit of Jagjit Singh, Inspector General of Prisons, Haryana, O/o the Director General of Prisons, Haryana

5. Learned Counsel for the petitioner has submitted that the petitioner has undergone actual sentence of more than 14 years and total sentence of 20 years with remissions and the case of the petitioner falls under the category 2(a) of the Premature Release Policy dated 12.04.2002 of the Haryana Government. The respondents vide impugned order dated 08.01.2021 (Annexure P-3) have deferred the case of premature release of the petitioner for two years. Further detention of the petitioner is against the said Govt. policy and in violation of Article 21 of the Constitution of India. The petitioner is fulfilling all the conditions for grant of pre-mature release as per the Govt. Instructions (Annexure P-2) and the present petition be allowed and the petitioner be set at liberty forthwith.

6. On the other hand, learned State Counsel reiterating the contents of reply has submitted that the petitioner along with four other

persons hatched a criminal conspiracy as a result of which, mother-in-law and father-in-law of the petitioner were murdered after their abduction. Even, their minor daughter was kidnapped and caused hurt. The petitioner has committed serious offences. The petitioner cannot claim premature release as a matter of right and it is only a concession given by the State Government after considering the behaviour of the convict inside the jail, gravity, nature of offence, manner and circumstances under which the crime was committed. In support of his arguments learned Counsel for the State has placed reliance on judgments passed by Hon'ble Apex Court in '**Maru Ram Vs. Union of India**' AIR 1980 SC 2147, decided on 11.11.1980 ; '**Swami Shardhanand @ Murli Manohar Mishra Vs. State of Karnataka** (SC) 2008(3) R.C.R. (Criminal) 772; W.P. (Crl.) No.48 of 2014 **Union of India Vs. V. Sriharan @ Murugan & Ors.** and SLP (Crl) No. 6467 of 2012 Crl. M.P. No. 17082 of 2012 titled **State of U.P. Vs. Sanjay Kumar**.

7. Learned State Counsel has further submitted that on completion of 14 years of actual sentence and 20 years and 1 day of total sentence as on 23.03.2020, the case of premature release of the petitioner was placed before the State Level Committee in its meeting held on 20.11.2020 for consideration. After considering the matter, the State Level Committee did not recommend the case of the convict for premature release and observed that though the case for premature release of the life convict is eligible for consideration as per para 2(a)(viii) and (xiii) of the premature release policy dated 12.04.2002,

but keeping in view the nature of crime committed by the life convict in a most cruel, ghastly and barbaric manner, the case for premature release of the life convict be deferred for two years w.e.f. 31.03.2020, the date of his eligibility for consideration of his premature release.

8. It has been mentioned in the premature release policy itself that no convict has fundamental right of remission or shortening of sentence and the State Government, in exercise of its discretionary power of remission is to consider each case individually keeping in view all the relevant factors. The case for premature release of the petitioner will be re-considered after completion of two years w.e.f. 31.03.2020. Therefore, the present petition being devoid of any merits may be dismissed.

9. Hon'ble Apex Court in its judgments passed in **Maru Ram** and **Swami Shardhananad (Supra)** has held that a convict cannot claim premature release as a matter of right and it would be at the sole discretion of the Government to exercise the power conferred on it in accordance with law.

10. In **W.P. (Crl.) No.48 of 2014 Union of India Vs. V. Sriharan @ Murugan & Ors.** it was held that the powers under Sections 432 and 433 of the Code of Criminal Procedure, 1973 are to be exercised by the Appropriate Government statutorily and it is not for this Court to exercise the said power and it is always left to be decided by the Appropriate Government.

11. Further, in case, **SLP (Crl) No. 6467 of 2012 Crl. M.P. No. 17082 of 2012 titled State of U.P. Vs. Sanjay Kumar** as relied

upon by learned State Counsel, Hon'ble Supreme Court has held as under :-

“.....Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years, rather it always meant as the whole natural life. This Court has always clarified that the punishment so awarded would be subject to any order passed in exercise of the clemency powers of the President of India or Governor of State, as the case may be. Pardons, reprieves and remissions are granted in exercise of prerogative power. There is no scope of judicial review of such orders except on very limited grounds for example non-application of mind while passing the order; non-consideration of relevant material; or if the order suffers from arbitrariness.

The power to grant pardons and to commute sentences is coupled with a duty to exercise the same fairly and reasonably. Administration of justice cannot be perverted by executive or political pressure. Of course, adoption of uniform standards may not be possible while exercising the power of pardon. Thus, such orders do not interfere with the sovereign power of the State. More so, not being in contravention of any statutory or constitutional provision, the orders, even if treated to have been passed under Article 142 of the Constitution do not deserve to be labelled as unwarranted. The aforesaid orders have been passed considering the gravity of the offences in those cases that the accused would not be entitled to be considered for premature release under the guidelines issued for that purpose i.e. under Jail Manual etc. or even under Section 433-A Cr.P.C.....”

12. In the above referred judicial precedents, it has been held that the case of premature release of a life convict is governed by the policy/guidelines of the Government and the gravity of the offence(s) of the accused are also to be considered for the purpose.

13. However, Hon'ble Apex Court in its judgment passed in **'State of Haryana and Ors. Vs. Jagdish** decided on 22.03.2010 has held as under :-

27. Nevertheless, we may point out that the power of the sovereign to grant remission is within its exclusive domain

and it is for this reason that our Constitution makers went on to incorporate the provisions of Article 72 and Article 161 of the Constitution of India. This responsibility was cast upon the Executive through a Constitutional mandate to ensure that some public purpose may require fulfillment by grant of remission in appropriate cases. This power was never intended to be used or utilised by the Executive as an unbridled power of reprieve. Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way, wipe out the conviction. It is a power which the sovereign exercises against its own judicial mandate. The act of remission of the State does not undo what has been done judicially. The punishment awarded through a judgment is not overruled but the convict gets benefit of a liberalised policy of State pardon. However, the exercise of such power under Article 161 of the Constitution or under Section 433-A Cr. P.C. may have a different flavour in the statutory provisions, as short sentencing policy brings about a mere reduction in the period of imprisonment whereas an act of clemency under Article 161 of the Constitution commutes the sentence itself.

28. In **Epuru Sudhakar & Another v. Govt. of A.P. & Ors. AIR 2006 SC 3385** this Court held that reasons had to be indicated while exercising power under Articles 72/161. It was further observed (per Kapadia, J) in his concurring opinion:

"Pardons, reprieves and remissions are manifestation of the exercise of prerogative power. These are not acts of grace. They are a part of Constitutional scheme. When a pardon is granted, it is the determination of the ultimate authority that public welfare will be better served by inflicting less than what the judgment has fixed...

Exercise of Executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty....

Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an Executive action that mitigates or sets aside the

punishment for a crime...

The power under Article 72 as also under Article 161 of the Constitution is of the widest amplitude and envisages myriad kinds and categories of cases with facts and situations varying from case to case.”

38. At the time of considering the case of pre-mature release of a life convict, the authorities may require to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict any more; the socio-economic condition of the convict's family and other similar circumstances.

39. Considerations of public policy and humanitarian impulses - supports the concept of executive power of clemency. If clemency power exercised and sentence is remitted, it does not erase the fact that an individual was convicted of a crime. It merely gives an opportunity to the convict to reintegrate into the society. The modern penology with its correctional and rehabilitative basis emphasis that exercise of such power be made as a means of infusing mercy into the justice system. Power of clemency is required to be pressed in service in an appropriate case. Exceptional circumstances, e.g. suffering of a convict from an incurable disease at last stage, may warrant his release even at much early stage. '*Vana Est Illa Potentia Quae Nunquam Venit In Actum*' means-vain is that power which never comes into play.

40. Pardon is an act of grace, proceedings from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment which law inflicts for a crime he has committed. Every civilised society recognises and has therefore provided for the pardoning power to be exercised as an act of grace and humanity in appropriate cases. This power has been exercised in most of the States from time immemorial, and has always been regarded as a necessary attribute of sovereignty. It is also an act of justice, supported by a wise public policy. It cannot, however, be treated as a privilege. It is as much an official duty as any other act. It is vested in the Authority not for the benefit of the convict only, but for the welfare of the people; who

may properly insist upon the performance of that duty by him if a pardon or parole is to be granted.... "

14. In view of the above judicial precedent, it has become clear that pardons, reprieves and remissions are manifestation of the exercise of prerogative power. These are not acts of grace and are a part of Constitutional scheme. It is as much an official duty as any other act which is vested in the Authority not for the benefit of the convict only, but for the welfare of the people; who may properly insist upon the performance of that duty by him if a pardon or parole is to be granted.

15. In the present case, the petitioner has sought his premature release on the ground that as per policy dated 12.04.2002 which was prevalent at the time of his conviction, he has completed the required sentence for considering his case for pre-mature release. However, the respondents have deferred the case of the petitioner keeping in view of the heinousness/gravity of crime committed by him and his case will be re-considered after two years from the date when he was eligible for premature release.

16. The petitioner along with his co-accused by hatching conspiracy had committed murder of his mother-in-law and father-in-law with 'kulhari', 'gandasi' and stones after their abduction in order to grab their property. Their minor daughter Alka was also kidnapped and injuries were inflicted upon her.

17. The petitioner was convicted for sentence to life on 14.12.2007. Hence, the premature policy dated 12.04.2002 is applicable upon the petitioner.

The relevant Clause 2 (a) of the said policy 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 undertrial period provided that such sentence including remissions is not less than 20 years.
(i) Murder with wrongful confinement for extortion/robbery.	
(ii) Murder while undergoing life sentence.	
(iii) Murder with dacoity.	
(iv) Murder with offence under TADA Act, 1987.	
(v) Murder with untouchability (Offences) Act, 1955.	
(vi) Murder in connection with dowry.	
(vii) Murder of a child under the age of 14 years.	
(viii) Murder of a woman.	
(ix) Murder after abduction or kidnapping.	
(x) Murder exhibiting brutality such a cutting the body into piece of burning/dragging the body as evident from judgment of the Court.	
(xi) Persistent bad conduct in the prison.	
(xii) Convicts who cannot for some definite reasons be prematurely release without danger to public safety.	
(xiii) Convicts who have been imprisoned for life under Section 120-B IPC.	
(xiv) Any other crime that the State Level Committee considers to be 'henious' for reasons to be recorded in writing.	

18. As per the reply submitted by the respondent/State, the petitioner has undergone 15 years and 20 days of actual sentence and 20 years, 4 months and 10 days of total sentence including remissions as on 12.04.2021 and the case of the petitioner falls within the ambit of the aforesaid clause of premature policy dated 12.04.2002.

19. Hon'ble Apex Court in its case **Criminal Appeal No. 30 of 2005** titled as "**State of Haryana Versus Mahender Singh and Others**" decided on 02.11.2007, has held as under :-

32. A right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder. Although no convict can be said to have any constitutional right for obtaining remission in his sentence, he in view of the policy decision itself must be held to have a right to be considered therefor. Whether by reason of a statutory rule or otherwise if a policy decision has been laid down, the persons who come within the purview thereof are entitled to be treated equally. It is now well-settled that any guidelines which do not have any statutory flavour are merely advisory in nature. They cannot have the force of a statute. They are subservient to the legislative act and the statutory rules.

33. Whenever, thus, a policy decision is made, persons must be treated equally in terms thereof. A' fortiori the policy decision applicable in such cases would be which was prevailing at the time of his conviction.

20. In view of the above referred judicial precedent, this fact is not disputed that whenever a policy decision regarding remission of sentence is made, persons must be treated equally in terms thereof and the case of the petitioner for his premature release is to be considered equally with other cases of life imprisonment where double murder has been committed and the life convicts were released pre-maturely on

their fulfillment of the criteria/conditions of the policy/instructions of the State Government.

21. Further, 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.

22. 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.

23. In the case in hand, the policy dated 12.04.2002 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. The petitioner has

undergone more than 15 years of actual sentence and more than 20 years of sentence with remissions. The said fact being not disputed by the respondent/State. 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. Even otherwise also the deferred period of two years is to be reckoned from 31.03.2020 which is going to expire within few days.

24. In view of the above discussion, the present petition is allowed and impugned order dated 08.01.2021 (Annexure P-3) is set aside.

25. The petitioner be set at liberty forthwith, if not required in any other case.

7 th March, 2022
kavneet singh

(SANT PARKASH)
JUDGE

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