

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

CRWP-3822-2021 (O&M)

Date of decision: 21.07.2022

Aftab @ Sakil

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Hoshiar Singh Jaswal, Advocate for the petitioner.

Mr. Pawan Kumar Jhanda, AAG Haryana.

HARNARESH SINGH GILL, J. (ORAL)

Prayer in the petition filed under Article 226/227 of the Constitution of India is for quashing/setting aside order dated 22.03.2021 (Annexure P-3) passed by respondent No. 1 deferring the premature release case of the petitioner for another two years and to issue direction to the respondents to reconsider the case of the petitioner in view of the Policy of the Haryana Government dated 12.04.2002 (Annexure P-2).

Learned counsel for the petitioner submits that the case of the petitioner is fully covered with Clause 2(aa) of the Policy of the Haryana Government dated 12.04.2002, *which says that the convicts who have been imprisoned for life having committed a heinous crime: their cases may be considered after completion of 20 years actual sentence including undertrial*

period provided that such sentence including remissions is not less than 25 years, and as on 18.12.2020, the petitioner has undergone the actual sentence of 20 years 07 months and 11 days and in total 25 years and 01 day, including remissions earned by him. But the case of premature release of the petitioner was wrongly deferred vide order dated 22.03.2021 passed by the Additional Chief Secretary to Government of Haryana, Jails Department. The relevant part of the order dated 22.03.2021 would read as under:-

“The premature release case of life convict No. 3582/C Aftab @ Sakil son of Jamal Hussain r/o Village Khana Badosh, P.S. Buland Shahr, District Buland Shahr (U.P.) who is confined in District Jail, Gurgaon was considered by the State Level Committee on 18.02.2021. This life convict along with two other co-accused had trespassed the house of Dhan Singh and committed his murder and also injured Murti, Anita, Sunita and Naresh by giving Danda blows on the intervening night of 10/11.03.2000 and robbed ornaments. This life convict was convicted and sentenced to life imprisonment on 07.04.2008 in case FIR No. 80 dated 11.03.2000, P.S. City Bahadurgarh under Sections 460/396 IPC by the Ld. Addl. Sessions Judge, Jhajjar.

The period of sentence undergone by this convict in this jail up to 16.12.2020 is as under:-

	<i>Y</i>	<i>M</i>	<i>D</i>
<i>Actual Sentence</i>	<i>20</i>	<i>07</i>	<i>11</i>
<i>Total Sentence</i>	<i>25</i>	<i>00</i>	<i>00</i>

....XXXX....

3. After agreeing with the recommendation of the State Level Committee, the premature release case of this life convict is deferred for two years and will be re-considered after two years from 31.12.2020 subject to his good conduct during this deferred period.”

In support of his case, learned counsel for the petitioner relies upon the order dated 10.02.2022 passed by the Hon'ble Supreme Court in Writ Petition (Criminal) No. 439 of 2021 titled as Sharafat Ali Vs. State of Uttar Pradesh and Another. The relevant Para would read as under:-

“9 For the above reasons, we allow the petition by setting aside the impugned order dated 30 July 2021 passed by the Government of Uttar Pradesh. We direct that the application of the petitioner for premature release shall be reconsidered on the basis of the policy as it stood on 17 January 2005, when the petitioner was convicted of an offence under Section 302 read with Section 34 of the IPC. The application shall be considered afresh without the petitioner being required to file any fresh application for premature release. An order shall be passed after taking into account all relevant facts and circumstances including those which have been adverted to above. This exercise shall be completed within a period of two months from the date of this order.”

Learned State counsel does not dispute the existence of the Policy of the Haryana Government dated 12.04.2002 when the petitioner was convicted.

I have heard the learned counsel for the parties.

As per the order dated 10.02.2022 passed by the Hon'ble Supreme Court, the application for premature release of a convict has to be considered on the basis of the policy as it stood on the date when the petitioner was convicted of the offence. In the present case, the Policy of the Haryana Government dated 12.04.2002 was in vogue, when the petitioner was convicted. The petitioner has undergone the actual sentence of 20 years 07 months and 11 days and in total 25 years and 01 day, including remissions earned by him and as per Clause 2(aa) of the Policy of the Haryana

Government dated 12.04.2002, the case of the petitioner is fully covered with the Policy.

In view of the above, the petition is disposed of with a direction to respondent No.2-Director General of Prisons, Haryana, to re-consider the case of the petitioner in terms of the order dated 10.02.2022 passed by the Hon’ble Supreme Court of India, within a period of 2 months from the date of receipt of certified copy of this order.

21.07.2022

Mangal Singh

(HARNARESH SINGH GILL)
JUDGE

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