

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-W-1653-2022 in/and
CRWP-4264-2021 (O&M)
Date of Decision:- 08.12.2022

Jiya Lal

... Petitioner

Versus

The State of U.T. Chandigarh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

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

GURVINDER SINGH GILL, J. (Oral)

CRM-W-1653-2022

In view of the reasons mentioned in the application, the same is allowed and the matter is preponed from 28.3.2023 and is taken on Board today itself.

CRWP-4264-2021 (O&M)

1. The petitioner assails order dated 17.2.2021 (Annexure P-4) vide which the case of the petitioner for his premature release has been declined.
2. The petitioner stands convicted for offences punishable under Sections 460 and 302 IPC vide order dated 26.7.2008 pursuant to

judgment dated 23.7.2008, passed by learned Additional Sessions Judge, Chandigarh, in a case arising out of FIR No. 225, dated 17.8.2000, Police Station West, Chandigarh, under Sections 460, 302 and 120-B IPC. Though, the petitioner challenged his conviction by way of filing an appeal in this Court vide CRA-D-519-DB-2008, but the same also came to be dismissed vide judgment dated 23.1.2012 and the same is stated to have attained finality.

3. Learned counsel submits that the impugned order has been passed in a mechanical manner and in fact has been passed against the factual position and against the report made by District Magistrate, Amethi (Annexure P-5).
4. Learned counsel in this regard has referred to the impugned order dated 17.2.2021 (Annexure P-4), the relevant extract of which reads as follows:

“.....
And whereas, the Additional Inspector General of Prisons, Union Territory, Chadigarh had forwarded the application of convict Jiya Lal, S/O Shri Gunni Ram to this Administration for taking decision in the premature release of said convict. The District Magistrate, Amethi, Utar Pradesh vide letter dated 24.12.2020 has not recommended the premature release of convict Jiya Lal, S/O Shri Gunni Ram.

.....
And whereas, the opinion of Additional District and Sessions Judge, UT Chandigarh and comments of District Magistrate, Amethi, Uttar Pradesh has been gone through, which clearly shows that the crime committed by convict Jiya Lal, S/O Shri Gunni Ram is very heinous, therefore, his premature release will not serve any good purpose.

Hence, considering the totality of facts, the undersigned, do not find it a fit case, wherein, the concession of premature release can

be given as his premature release will give wrong signal to the society. Consequently, his prayer for premature release is declined.”

5. Learned counsel has further referred to the report of District Magistrate, Amethi (Annexure P-5) which is reproduced below for the sake of ready reference:

- “1. The criminal history of the convict: The criminal history of the convict in Police Station Gauriganj is NIL.
2. The detail of the family of the convict: The convict Jiya Lal son of Gunni Lal has six sons and two daughters who are available in village Saidpur.
3. The conduct of the convict regarding earlier parole availed/Parole for house repairs: The conduct of the convict remained good and there was no complaint.
4. The condition of house of the convict: The family members of the convict do agricultural work to their livelihood and having houses of Kacha and Pucca both.
5. Report with reasons and recommendation in respect to grant of parole: Keeping in view the earlier acts of the Convict Jiya Lal son of Gunni Lal, the parole case is seriously opposed. In view of above circumstances, no recommendation is made.”

6. A perusal of the impugned order as well as report Annexure P-5 indeed shows that while the report of District Magistrate, Amethi does not suggest any such conduct on part of the petitioner which could be said to be adverse, but the impugned order has been passed in a routine manner simply by observing that the District Magistrate, Amethi has not recommended the premature release of the petitioner and that he had committed a very heinous offence.

7. Hon’ble Supreme Court in a recent case decided on 10.2.2022 in Sharafat Ali Vs. State of Uttar Pradesh and another, Writ Petition (Criminal) No.439 of 2021, wherein also the case of an accused for

premature release had been declined by way of making general observations, directed that the matter be decided afresh by taking into account all the relevant facts and circumstances. The relevant extract from the said judgment is reproduced herein under:

- “7. The order which has been passed by the State government in the present case is bereft of an application of mind to relevant circumstances bearing on whether the petitioner should be released prematurely. The order contains general observations to the effect that the release may result in resentment on the side of the victim, but this is a general consideration which would govern virtually all criminal offences where a person stands convicted of a serious offence, as in the present case under Section 302 read with Section 34 of the IPC. The order does not contain any reference whatsoever to whether the petitioner possesses any prior criminal history, save and except for the present case. Similarly, the order is completely silent on the conduct and behavior of the petitioner in jail and after he was convicted of the offence. The relevant considerations bearing upon whether the release of the petitioner would pose a danger to society have not been adverted to. There has to be a considered application of mind to the facts of each case.
8. In the circumstances, the order which has been passed rejecting the application of the petitioner for premature release suffers from a complete and patent non-application of mind.
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.”

8. Bearing in mind the factual position of present case and the judgment in Sharafat Ali's case (Supra), the impugned order dated 17.2.2021 (Annexure P-4) is hereby set aside and the authorities concerned are directed to decide the matter afresh expeditiously within a period of 3 months from today by taking into account all the relevant facts and by passing a speaking order.
9. The petition stands disposed of accordingly.

08.12.2022
mohan

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No