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

CRWP-4369-2022

Date of decision : 16.12.2022

Jai Parkash

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vijay K. Jindal, Advocate for the petitioner.

Mr. Vishal Malik, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

This is a Criminal Writ Petition filed under Articles 226/227 of the Constitution of India for grant of premature release.

Learned counsel for the petitioner has submitted that the petitioner had earlier filed Criminal Writ Petition No.909 of 2020 which was decided by the Coordinate Bench of this Court vide order dated 25.02.2022 and after considering all the objections, including the objections which have been raised at the time of the passing of the present impugned order, the Coordinate Bench of this Court was pleased to allow the said petition and had directed the respondent authorities to consider the application filed by the petitioner dated 09.08.2019 (Annexure P-4 therein) submitted by the brother of the petitioner for releasing the petitioner

prematurely with further direction to decide the same by passing a speaking order thereon in the light of the observations made in the said order within a period of one month from the date of receipt of certified copy of the order.

Learned counsel for the petitioner has further submitted that the authorities, vide impugned order dated 21.04.2022 (Annexure P-6), have again rejected the case of the petitioner on the grounds which had already been rejected by the Coordinate Bench while allowing CRWP-909-2020. It is contended that a perusal of the impugned order would show that as on 11.03.2022, the actual sentence undergone by the petitioner was 17 years, 9 months and 27 days and the total sentence undergone was 20 years, 11 months and 28 days and even subsequent to 11.03.2022, a further period of 9 months has elapsed, thus, further adding to the period of actual and total sentence undergone by the petitioner. It is further contended that in the impugned order, there is no reference to any subsequent or additional aspect, other than the aspect which had already been considered in the earlier litigation.

On the other hand, learned counsel for respondent Nos.1 to 4 has opposed the present petition and has submitted that in the present case, the petitioner has been convicted in FIR No.312 dated 03.06.2000 registered under Sections 302/34 of IPC and Section 25 of the Arms Act, 1959 at Police Station Sadar, Gurgaon, District Gurgaon, in which, murder of two persons had been committed i.e. of Tej Singh and Vikram Singh. It is further submitted that when the petitioner was granted parole in the said FIR, he was involved in another murder case in FIR No.366 dated 05.05.2006 registered under Sections 302, 307, 332, 353, 34, 120-B of IPC at Police

Station City Gurgaon. It is contended that the petitioner had even absconded from parole for 3 years, 11 months and 9 days and the FIR regarding the same was also registered against him and he was convicted and sentenced to undergo imprisonment as had already been undergone as on 27.07.2010. It is argued that the said factors show that the petitioner is dangerous to the society and the case of the petitioner for his premature release deserves to be dismissed.

This Court has heard learned counsel for the parties and has perused the paper book.

The petitioner was arrested in FIR No.312 dated 03.06.2000 registered under Sections 302/34 of IPC and Section 25 of the Arms Act, 1959 at Police Station Sadar, Gurgaon, District Gurgaon and after the trial was concluded, he was convicted and sentenced to undergo life imprisonment vide judgment dated 31.10.2003 passed by the Court of Additional Sessions Judge, Gurgaon and appeal filed by the petitioner against the said judgment was dismissed by this Court in the year 2010. The petitioner had earlier filed CRWP-909-2020 for issuance of writ in the nature of mandamus directing the respondents to consider the application dated 09.08.2019 made by the brother of the petitioner for releasing the petitioner prematurely in view of the policy/instructions dated 12.04.2002. In the said case, the same objections were raised by the State Counsel as have been raised by the learned State Counsel in the present case and as have been mentioned in the impugned order. After considering the said objections, the Coordinate Bench of this Court vide order dated 25.02.2022 had allowed the said petition with directions to the respondent authorities to

consider the application dated 09.08.2019 in the light of observations made in the order within a period of one month from the date of receipt of certified copy of the said order. Relevant portion of the said order is reproduced hereinbelow:-

“On the other hand, learned State Counsel has strongly opposed the present petition on the ground that since the petitioner had committed a heinous crime, hence his case falls under clause 2(aa)(iv) (persons convicted for second time for murder) of the policy dated 12.04.2022, which prescribes 20 years of actual sentence and 25 years of total sentence including remissions. He further submitted that the petitioner was released on parole on 13.06.2005 for one week and was directed to surrender on 21.06.2005 but he did not surrender on due date and remained absconded from parole for more than 03 years and 11 months. Even more, during absconding period, he had committed another murder. Thus, the case of the petitioner falls under clause 2(aa)(iv) of the said policy.

This Court has heard the learned counsel for the parties and perused the case file including the relevant Premature Release Policy.

It is not disputed that the case of premature release of a life convict is governed by the policy of the Government prevailing on the date of judgment of conviction and not by the policy which existed on the date of consideration of his premature release. Undisputedly, at the time of conviction of petitioner i.e, 31.10.2003, the prevailing policy for pre-mature release of convicts was Premature Release Policy dated 12.04.2002.

The State government vide Notification dated 12.04.2002 revised the policy regarding pre-mature release of life convicts. The relevant portion thereof 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 under trial period provides of such sentence including remissions is not less than 20 years
(i)	Xx xx xx	
(ii)	Murder while undergoing life sentence	

Admittedly, the petitioner was initially convicted in case FIR No. 312 dated 03.06.2000 under Sections 302/34 IPC and sentenced to undergo life imprisonment. It is also not disputed that when the petitioner was on parole in the said case, he committed another murder for which FIR No.366 dated 05.05.2005 was registered under Sections 302/34/120-B/353 IPC against him. In the second FIR, he was convicted and sentenced to life imprisonment by the learned Additional Sessions Judge, Rewari vide order dated 01.09.2011. Aggrieved by the said judgment, the petitioner preferred an appeal, which is pending consideration before this Court. Thus, it is clear that when the petitioner was undergoing life imprisonment in first FIR No.312 dated 03.06.2000, he committed second murder, attracting the clause 2(a)(ii) as reproduced above, which prescribes 14 years of actual sentence and 20 years of total sentence including remissions. Since in the case in hand, the petitioner has already undergone more than 17 years and 09 months of actual sentence and more than 21 years and 06 months of total sentence including remission, which could not be disputed by the learned counsel for the State, the present petition deserves to be accepted. It has also come in the reply that the petitioner has already been punished for absconding from parole.

*So far as the plea of learned counsel for the State that the petitioner absconded from the parole for more than 03 years and 11 months is concerned, it is not disputed that the petitioner has already been punished for that by awarding sentence. Moreover, in “**Kamal Kant Tiwari Versus State of Punjab and Others**” 2014 (2) RCR (CR) 940, this court has held that jail offence committed by life convict not to be taken into consideration while considering his case for grant of premature release as the convict will have to face consequences for jail offence separately. In “**Subhash Versus State of Haryana**” 1994(3) RCR (Criminal) 489, this Court has held that commission of jail offences is no legal ground to deny premature release which became due especially when convict had already been punished for jail offences.*

In view of the above, the present petition is allowed, as prayed for. The respondent authorities are directed to consider the application dated 09.08.2019 (P-4), submitted by brother of the petitioner for releasing the petitioner prematurely, and decide the same by passing a speaking order thereon in the light of observations made above, within a period of one month from the date of receipt of certified copy of this order, failing which, the petitioner will be released to the satisfaction of District Magistrate, Gurugram on usual terms and conditions.

25.02.2022

Sd/-(SANT PARKASH)

JUDGE”

A perusal of the above order would show that an objection was raised by the learned State Counsel therein to the effect that since in the said case, subsequent to FIR No.312 dated 03.06.2000, the petitioner was involved in another murder case, thus, the case of the petitioner would fall under Clause 2(aa) Sub Clause (iv) of the policy dated 12.04.2022, which prescribes 20 years of actual sentence and 25 years of total sentence

including remissions. Even, the objections to the effect that the petitioner had been released on parole on 13.06.2005 and had absconded from parole for a period of more than 3 years and 11 months and was involved in another murder case, were also noticed. It was observed in the said order that the policy dated 12.04.2022 was applicable, which fact has not been disputed even before this Court. The Coordinate Bench of this Court had observed that the case of the petitioner would fall under Clause 2(a)(ii) and the prescribed period, as regards the eligibility for premature release was 14 years of actual sentence and 20 years of total sentence including remissions and the petitioner had already undergone that sentence. With respect to the aspect of having absconded from parole, it was observed that he had been punished for the same by awarding sentence. The Coordinate Bench of this Court had thereafter allowed the petition and had directed the respondent authorities to consider the application in the light of observations made therein. In pursuance of the said order, the impugned order dated 21.04.2022 has been passed and a perusal of the same would show that the premature release case of the petitioner has been rejected again on the same grounds which were raised by the learned State Counsel at the time of the decision of the said writ petition and which were duly noticed and not decided in favour of the State. It is also not in dispute that the earlier order dated 25.02.2022 has not been challenged by the State and has thus, attained finality. Since, the impugned order does not refer to any reasons while rejecting the case of premature release of the petitioner, other than the reason which had been considered and rejected in the first round of litigation, thus, this Court is of the opinion that the impugned order dated

21.04.2022 deserves to be set aside.

Keeping in view the abovesaid facts and circumstances, the present Criminal Writ Petition is allowed and the impugned order dated 21.04.2022 is set aside and the direction is given to the respondent authorities to consider the application dated 09.08.2019 (Annexure P-3) submitted by the brother of the petitioner for releasing the petitioner prematurely and decide the same by passing a speaking order after taking into consideration the observations/findings in the order dated 25.02.2022 passed in CRWP-909-2020 and in accordance with law within a period of six weeks from the date of receipt of certified copy of this order, failing which the petitioner would be released on interim parole subject to the satisfaction of the District Magistrate, Gurugram on usual terms and conditions, till the time the final decision is taken.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid judgment.

16.12.2022

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No