

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-6481-2021

Date of Decision: 16.03.2022

Mangal Singh

...Petitioner

Versus

The State of U.T. Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

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

Mr. Kuldip Tewari, Addl. P.P.
for respondent-UT, Chandigarh.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

SANT PARKASH, J.

The petitioner has filed the present petition under Article 226/227 of the Constitution of India for setting aside the impugned order dated 18.08.2020 (P-5) passed by respondent No.1, whereby the claim of the petitioner for releasing him prematurely has been rejected. Further prayer has been made for issuing appropriate directions to the respondents to release the petitioner prematurely in view of the Govt. Policy dated 08.07.1991 (Annexure P-3).

The petitioner was arrested in case FIR No.20 dated 09.01.2003 under Sections 302/364 of the Indian Penal Code, 1860 registered at Police Station Sector-34, Chandigarh. The petitioner was convicted for the aforesaid offences by the Court of learned Additional Sessions Judge, Chandigarh, vide judgment and order dated 20.08.2004 and he was

sentenced to undergo life imprisonment.

Aggrieved by the above-said judgment, the petitioner preferred an appeal bearing CRA-921-DB-2004 before this Court, which was dismissed by this Court on 02.03.2009.

The petition has been opposed by the respondents/State in terms of short reply filed by Mr. Pradhuman Singh, HCS, Superintendent Model Jail, Chandigarh.

Learned Counsel for the petitioner has contended that as per the policy of the Punjab Government dated 08.07.1991 (P-3), the petitioner is entitled for pre-mature release. He has further contended that as per the said policy/instructions, the petitioner had to undergo 12 years of actual sentence and 18 years of total sentence including remissions. He, thus, argued that since the petitioner has already undergone more than 18 years of actual sentence and more than 25 years of total sentence including remissions, further detention of the petitioner is illegal and against the said Govt. policy and violation of Article 21 of the Constitution of India.

On the other hand, learned State Counsel has strongly opposed the present petition on the ground that the petitioner had kidnapped/abducted the victim and committed her murder and thus, he committed a heinous crime. He has further submitted that the pre-mature release case of the petitioner was declined by respondent No.1 vide order dated 18.08.2020 on the ground that case of the petitioner has not been found fit, keeping in view the facts and circumstances as well as opinion of learned trial Court. He next submitted that the date of conviction of the petitioner is 20.08.2004 therefore, the premature policy dated 08.07.1991

would be applicable in his case. As per the offence committed by the petitioner, his case falls within column B of para 1.1 as defined under clause (A)(vii) of the policy dated 08.07.1991, which prescribes completion of 12 years of actual sentence and not less than 18 years with remissions. He further submitted that the petitioner was released on 28 days parole on 18.05.2009 and was due to surrender on 16.06.2009 but he did not surrender on due date and absconded from parole. However, the petitioner was re-admitted in jail on 26.10.2009.

This Court has heard the learned counsel for the parties and perused the case file.

This fact 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. It is brought to the notice of the Court by the learned counsel for the State that the Chandigarh Administration vide gazette notification dated 02.04.1997 had adopted the Punjab Jail Manual, 1996 for the purpose of considering premature release of prisoners. Undisputedly, at the time of conviction of petitioner i.e. 20.08.2004, the prevailing policy for pre-mature release of convicts was Premature Release Policy dated 08.07.1991.

The State government vide letter dated 08.07.1991 revised the policy regarding pre-mature release of life convicts. The relevant portion thereof reads as under:-

“1.1 Minimum periods of imprisonment to be undergone for the convict before consideration of application for exercise of powers of the Government under Article 161

of the Constitution.

Cases will be considered by the Government grant of remission after the following periods of imprisonment are undergone by the convicts:-

(Period of years)

		Adults		Female	
		Actual imprisonment	Imprisonment with remission	Actual imprisonment	Imprisonment with remission
A	For convicts whose death sentence has been committed to life imprisonment	14	20	10	14
B	Convicts who have been imprisoned for life for offence for which death is a punishment and have committed heinous crime	12	18	8	12
C	Convicts who have been imprisoned for offence for which death is a penalty but crimes are not considered heinous	10	14	8	12
D	Other life convicts imprisoned for life for offences for which the death penalty is not a punishment and have committed heinous crimes	10	14	8	12
E	Other life convicts	8	14	6	18

- A. Heinous crimes with reference to column 'B' of 1 (1) above are defined as follows:-
- i). to vi). xx xx xxxx xx xx
- vii). Offence under Section 302 where the victim is a child under the age of 14 years.”

As per the policy/instructions dated 08.07.1991 (P-3), the case of the petitioner falls in the category “heinous crimes” under column B of para 1.1 as defined under clause (A)(vii) of the policy, according to which,

the case of the petitioner could be considered for pre-mature release after completion of 12 years of actual imprisonment and 18 years of imprisonment, including remissions. It has further been mentioned in the reply that the petitioner is on special prole till 24.04.2022. As per the latest custody certificate dated 14.02.2022, the petitioner has already undergone 18 years and 01 month of actual sentence and 25 years and 03 months of sentence including remissions.

As per the reply dated 08.02.2022, the case of the petitioner for premature release was declined by respondent No.1 without recording any definite reason. Thus, the case of the petitioner is squarely covered as per the said policy dated 08.07.1991 (P-3). As such, the petitioner is entitled to be released prematurely. Moreover, the policy has been framed for the benefit of the convicts and for the welfare of the prisoners. Further, as per Clause B(II) of the said policy, the overall conduct of the life convict during his confinement in jail with specific emphasis on his/her conduct for the last five years from the date of his/her eligibility for consideration of pre-mature release is to be seen and the convict has not been punished for any jail offence during the last five years.

So far as the plea of learned counsel for the State that the petitioner absconded from the parole 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 in to conduction while considering his case for grant of pre-mature release as the convict will have to face consequences for

jail offence separately.

Considering the facts and circumstances of the case, this Court is of the considered view that the case of the petitioner is squarely covered as per the said policy dated 08.07.1991 (P-3). Moreover, the policy has been framed for the benefits of the convicts and for the welfare of the prisoners. Since the petitioner has already undergone more than the requisite sentence as per the said policy, the present writ petition is allowed. The petitioner be set at liberty forthwith, if is not required in any other case.

16.03.2022
mks

(SANT PARKASH)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO