

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

1. **CRWP-7180-2021**
Decided on : February 11th, 2022

Jai Kishan @ Bhola

. . . Petitioner(s)

Versus

State of Punjab and others

. . . Respondent(s)

2. **CRWP-7256-2021**

Karnail Singh

. . . Petitioner(s)

Versus

State of Punjab and others

. . . Respondent(s)

3. **CRWP-7178-2021**

Mahesh Inder @ Happy

. . . Petitioner(s)

Versus

State of Punjab and others

. . . Respondent(s)

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

PRESENT: Ms. B.P.K.Brar, Advocate, for the petitioner.

Mr.Tanvir Joshi, AAG Punjab.

SANT PARKASH, J.

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

1. This judgment shall dispose of aforementioned three petitions as they have arisen out of the same FIR and involve common questions of facts and law therein. For the convenience of the Court, the facts are being taken

from CRWP-7180-2021 titled as Jai Kishan @ Bhola Vs. State of Punjab and

others.

2. The instant petition has been preferred under Article 226 of the Constitution of India praying for issuance of direction to the respondents to initiate and consider the case for premature release of the petitioner in FIR No.140 dated 28.11.2005 under Sections 302/307/34 of IPC and 25 & 27 of Arms Act, Police Station Julkan, District Patiala whereby the petitioner was convicted and sentenced to undergo life imprisonment vide order dated 20.02.2010 passed by the Sessions Judge, Patiala out of which the petitioner has already undergone more than 9 years and 5 months of actual sentence.

3. The Criminal Appeal bearing No. CRA-290-DB-2010 filed by the petitioner against the judgment/order of conviction & sentence has been dismissed by this Court vide its judgment dated 06.08.2015. The petitioner is confined in Open Air Agricultural Jail at Nabha.

4. Learned counsel for the petitioner has stated that the petitioner is entitled to be released prematurely as he has already undergone the required sentence for premature release in view of the Instructions of Govt. of Punjab dated 08.07.1991 regarding premature release of the life convicts in exercise of the powers conferred under Sections 432, 433 and 433(A) of Cr.P.C. and Article 161 of the Constitution of India.

5. Learned counsel has relied upon a judgment in the case of **State of Haryana Vs, Mohinder Singh 2007(4) RCR 909** wherein the Hon'ble Supreme Court observed that the instructions which were applicable at the time of conviction are to be applied for consideration in the case of life convict for grant of premature release.

6. Learned State counsel has filed reply by way of affidavit of Manjit Singh Tiwana, Superintendent, Open Air Agriculture Jail, Nabha wherein it is stated that the petitioner is not entitled to get premature release as he does not fulfill the condition of Premature Release Policy dated 08.07.1991 as well as existing Policy dated 14.12.2017 whereby the petitioner is required to undergo 09 years actual or 13 years actual or with remission but in this case, he has undergone 07 years, 01 month and 05 days of actual sentence.

I have heard learned counsel for the parties and gone through the record.

A perusal of reply reveals that Govt. of Punjab had constituted a Committee for examination of the premature release cases of the life convict and a meeting of the said committee was held on 16.07.2020 wherein it was decided that for calculating the actual sentence the following formula should be adopted:-

Custody during under trial period + conviction period
–Parole period = actual sentence.

The above referred formula was enacted pursuant to meeting dated 16.07.2020 cannot be applicable to the case of the petitioner retrospectively.

Now the first and foremost question required to be adjudicated before this Court is as to which policy would be applicable to the present petitioners. It is pertinent to mention here that at the time of conviction of petitioners, the Premature Release Policy dated 08.07.1991 was in existence.

Hon'ble Apex Court in its judgments passed in **Criminal Appeal No. 566 of 2010 (Arising out of SLP (Crl.) No. 6638 of 2009** titled as “State

of Haryana and Ors. Vs. Jagdish” decided on 22.03.2010, reported as **2010(4) SCC 216** and Criminal Appeal No. 30 of 2005 titled as “**State of Haryana Vs. Mahender Singh and Others**” decided on 02.11.2007, reported as **2007(4) RCR (Criminal) 909**, has held that for grant of remissions, the life convict would be governed by the policy of remissions. prevailing on the date of the judgment of conviction and not by the policy which existed on the date of consideration of his premature release. Also, in case a liberal policy prevails on the date of consideration of the case of a “lifer” for pre-mature release, he should be given the benefit thereof.

10. In view of the above referred judicial precedents, 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. Undisputedly, at the time of conviction of petitioner i.e. 20.02.2010, the prevailing policy for pre-mature release of convicts was Premature Release Policy dated 08.07.1991. As per this policy, for considering the case of premature release, the condition required for life convict was to undergo 10 years actual sentence and 14 years of sentence with Remission. Further, the Government has issued instructions dated 23.10.2001, wherein it has been provided that where a convict opts to undergo sentence in Open Air Jail Nabha, he will be given the benefit of remissions of one year and will be released from jail one year earlier.

In the considered view of this Court, case of the petitioners is to be considered as per the conditions mentioned in Govt. Policy dated 08.07.1991 which were prevalent at the time of his conviction. Moreover, in view of the

instructions dated 23.10.2001 of the Punjab Govt., the petitioner shall also be granted the benefit of remission of one year as the convict opted to undergo his sentence in open Air Jail Nabha.

As per Custody Certificate dated 15.10.2021, as of now, the petitioner (in Crl. Writ Petition No.7180 of 2021) has undergone more than 10 years of actual sentence and more than 15 years with Remission. In Crl. Writ Petition No.7178 of 2021, petitioner – Mahesh Inder @ Happy, as per custody certificate dated 15.10.2021, has undergone more than 10 of actual sentence and 18 years of sentence with Remission. As regards, Crl. Writ Petition No.7256 of 2021, petitioner Karnail Singh, as on date, has undergone 9 years, 7 months and 27 days of actual sentence and more than 16 years with Remission. Consequently, the case of petitioners in aforementioned writ petitions falls within the ambit of Policy dated 08.07.1991 and all the three petitions are hereby allowed. The petitioners be set at liberty forthwith, if not required in any other case.

**(SANT PARKASH)
JUDGE**

February 11th, 2022

Avin/kavneet singh

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>