

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRWP-9010-2020

Date of decision: 11th February, 2022

Gautam Kalia

.....Petitioner

Versus

State of Punjab and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Argued by: Dr. Bandana Trikha, Advocate
for the petitioner.

Mr. Tanvir Joshi, AAG, Punjab

SANT PARKASH, J.

1. The case has been taken up for hearing through video conferencing.
2. The petitioner has filed the present petition under Article 226 of the Constitution of India for directing the respondents to release the petitioner prematurely on usual terms and conditions in view of the Govt. Policy dated 08.07.1991 (Annexure P-1) and quashing of order dated 06.01.2020 (Annexure P-2) whereby the case of the petitioner for his premature release has been declined.
3. The petitioner along with other co-accused was arrested in case FIR No. 56 dated 05.04.1999 under Sections 302, 324, 323, 148 and 149 of the Indian Penal Code, 1860 and Section 25 of the Arms Act registered at Police Station Model Town, Hoshiarpur. The petitioner was tried for the aforesaid offences and after completion of trial, the

petitioner was convicted and sentenced to undergo imprisonment for life by the Court of learned Additional Sessions Judge (Adhoc), Hoshiarpur vide order dated 16.12.2002. Feeling aggrieved, the petitioner assailed the aforesaid judgment by filing appeal CRA-D-64-DB-2003 which was also dismissed vide order dated 14.05.2013.

4. The petition has been opposed by the respondents/State in terms of reply filed by way of affidavit of Manjit Singh Tiwana, PPS, Superintendent, Central Jail, Hoshiarpur.

5. Learned Counsel for the petitioner reiterating the contents of rejoinder filed to the reply filed by the respondents has submitted that the Punjab Govt. had issued instructions dated 08.07.1991 (Annexure P-1) with regard to the Pre-Mature release of the life convicts and as per the said policy, the petitioner was required to undergo rigorous imprisonment of 10 years of actual sentence and total 14 years sentence with remissions whereas the petitioner has already undergone more than 12 years of actual sentence of imprisonment and has further undergone more than 20 years of sentence including remissions. Further detention of the petitioner is against the said Govt. policy and in violation of Article 21 of the Constitution of India. The petitioner was fulfilling all the conditions for grant of pre-mature release as per the Govt. Instructions dated 08.07.1991 and his case for pre-mature release was initiated and recommended but was subsequently declined on the ground that he had committed jail offence on 02.04.2018, whereby a mobile phone was recovered from the petitioner and a case was registered against him under Section 52-A of the Prisons Act, 1984. The parole of the

petitioner was stopped for one year in view of the said case. The petitioner has already been punished for the alleged offence but the official respondents are now again punishing the petitioner by not considering his case for another five years. The condition of maintaining good conduct in jail is not applicable in the case of those convicts who have already been convicted and sentenced for committing jail offences or crime separately. Further, the instructions which were applicable at the time of conviction were to be applied for grant of premature release to a life convict and in the present case, the Government has wrongly considered the case of the petitioner for premature release under instructions dated 04.04.2013, whereas his case was to be considered as per policy dated 08.07.1991 which was prevalent at the time of his conviction.

6. Learned Counsel for the petitioner has further submitted that the petitioner has already undergone the requisite sentence as per policy dated 08.07.1991 and in view of the same, the present petition be allowed and the petitioner be set at liberty forthwith.

7. On the other hand, learned State Counsel reiterating the contents of reply has submitted that premature release case of the petitioner was initiated and after obtaining police verification report, his case for premature release was sent to the Office of Additional Director General of Police (Prisons) Punjab, Chandigarh vide letter No.81 CT dated 03.01.2019 under the Government Policy dated 14.12.2017. Thereafter on 02.04.2018, during surprise search in Central Jail, Kapurthala, a mobile phone was recovered from the petitioner for which a case bearing FIR No.78 dated 02.04.2018 under Section 52-A

Prisons Act, PS Kotwali, Kapurthala, was got registered against the petitioner. The Office of Additional Director General of Police (Prisons) Punjab, Chandigarh vide its letter No. G-I/G-5/75 dated 06.01.2020 rejected the case of the petitioner for premature release stating that the he did not maintain good conduct in the jail in the last five years and a mobile phone was recovered from the petitioner.

8. Learned State Counsel has further submitted that as per the Government Policy dated 14.12.2017, Para No. 9, it is mandatory for any life convict to maintain good conduct in the jail for last five years before consideration of the premature release case. Though, the petitioner has completed the required sentence as per the Government Remission Policy dated 14.12.2017 but he has not maintained good conduct in jail for the last five years as mobile phone was recovered from possession of the petitioner on 02.04.2018 and even the parole of the petitioner was stopped for one year in accordance with the instructions issued by the Office of Additional Director General of Police (Prisons) wherein it has been mentioned that the conduct of any convict will not be considered as good conduct for one year from the date of committing any jail offence. The petitioner has requested to consider his premature release case as per the Pre Mature Release Policy dated 08.07.1991 of Government of Punjab and even in Para No. 3(B)(II) of the said policy, it has been specifically mentioned that the case of premature release will only be considered provided the convict has maintained good conduct in jail and has not committed any jail offence for a period of five years prior to the date of eligibility for consideration of his/her release. Therefore, the present petition being

devoid of any merits may be dismissed.

9. In the present case, the petitioner has sought his premature release on the ground that as per policy dated 08.07.1991 which was prevalent at the time of his conviction, he has completed the required sentence for considering his case for pre-mature release. However, the respondents have considered the case of the petitioner under the policy/instructions dated 14.12.2017 of the Government. Further, it has been pleaded that the petitioner has already been punished for the alleged jail offence of recovery of mobile phone from him and by not considering his case for another five years despite completion of his sentence as required in view of the policy/instructions of the State Government for pre-mature release he is being punished twice for the same offence.

10. 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. Versus Jagdish**" decided on **22.03.2010** and **Criminal Appeal No. 30 of 2005** titled as "**State of Haryana Versus Mahender Singh and Others**" decided on **02.11.2007** has held that for grant of remissions, the life convict would be governed by the policy of remission of Govt. 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.

11. Further, in **Mahender Singh & Ors. (Supra)**, it has been held that whenever a policy decision regarding remission of sentence is

made, persons must be treated equally in terms thereof. A fortiori the policy decision applicable in such cases would be which was prevailing at the time of his conviction.

12. In **“Lila Singh Versus State of Punjab”, 1988(1) RCR (Criminal) 28**, this Court has held as under :-

“ 7. The reasoning given in the order declining the pre-mature release of the petitioner, to the effect that he had committed a jail offence and his release will prove hazardous to peace and tranquility in the locality are no legal reasons to decline the pre-mature release. He has already undergone the imprisonment awarded to him for committing the jail offence and there is no material to hold that his release is likely to prove hazardous to peace and tranquillity in the locality.”

13. 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.

14. 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.

15. 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 exists on the date of consideration of his premature release.

16. It is pertinent to mention here that the Office of Additional Director General of Police (Prisons) Punjab, Chandigarh has rejected

the case of pre-mature release of the convict/petitioner on the sole ground that the petitioner has not maintained good conduct in the Jail for the previous five years as a mobile phone was recovered from the petitioner whereas, the petitioner had already served the punishment for the said offence by stopping his parole for a period of one year. As held by this Court in the above referred judicial precedents, the commission of jail offence is no legal ground to deny premature release, especially when the person has been punished for such a misconduct. Therefore, the case of the convict/petitioner for grant of premature release is to be considered without taking into consideration the jail offence.

17. Since, the petitioner in the present case has completed the required sentence as per the Government Remission Policy which was prevalent at the time of his conviction and has already served the punishment for the offence committed by him in jail, the present petition is allowed and impugned order dated 06.01.2020 (Annexure P-2) is set aside. The petitioner be set at liberty forthwith, if not required in any other case.

18. The petition stands disposed of with the aforesaid order.

11th Feburary, 2022
kavneet singh

(SANT PARKASH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No