

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRWP- 9296 of 2021

Date of Decision:23.05.2022

Charanjit Singh

---Petitioner

versus

State of Punjab and others

---Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mrs, Bhupinder Pal Kaur Brar, Advocate
for the petitioners
Mr. Karanbir Singh, AAG, Punjab

VINOD S. BHARDWAJ, J. (ORAL)

The instant Criminal Writ Petition has been filed under Article 226/227 of the Constitution of India for seeking setting aside of the impugned order dated 05.08.2021 (Annexure P-2) rejecting the application submitted by the petitioner for seeking premature release in terms of the Policy dated 08.07.1991 as applicable to the petitioner.

2. Briefly summarized, the facts of the instant case are to the effect that the petitioner was arrested in connection with case FIR No. 370 dated 10.11.2002 under Sections 302/120/34 of the Indian Penal Code registered at Police Station Haibowal, District Ludhiana. The petitioner was convicted by the Court of Additional Sessions Judge, Ludhiana vide judgment dated 16.02.2005 and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 2000/-. In default of payment of fine, the petitioner was to further undergo rigorous imprisonment for six months. It is stated by learned counsel for the petitioner that he had filed

Criminal Appeal bearing No. CRA-D-617-DB of 2006 against the judgment of conviction and the said appeal already stands dismissed by the High Court. She further points out that the petitioner has remained in jail since 2002 and that as per the Jail Roll, as on 22.4.2021, the petitioner has already undergone 16 years, 07 months and 12 days of actual sentence and total sentence including remissions 24 years, 07 months and 12 days. It is argued that as per the Punjab Government Policy dated 08.07.1991 applicable to the premature release case of the petitioner, under Column-C thereof, the petitioner is required to undergo an actual imprisonment of 10 years and total imprisonment of 14 years with remissions. Learned counsel contends that the petitioner has already undergone more than the required sentence for being considered for premature release. It is contended that the case of the petitioner for premature release was initiated in the month of February, 2020 by the jail authorities and forwarded the same to the Additional Director General of Police, Jail Department, Punjab Chandigarh and that vide order dated 05.08.2021, the case of the petitioner was rejected by the respondents. Learned counsel for the petitioner submits that the order rejecting the case of the petitioner for grant of premature release is misconceived and is based upon non-consideration of relevant material on record. She contends that the order principally relies upon registration of case FIR No. 88 dated 13.04.2019 registered against the petitioner and refers to the report of the Senior Superintendent of Police, Moga as per which three cases were registered against the petitioner.

By placing reliance on the reply furnished by the respondent-State, reference is made to the table incorporated by the respondent authorities and the same is extracted hereinbelow:-

<i>Sr. No.</i>	<i>FIR details</i>	<i>Date of decision</i>	<i>Conviction/Acquittal details</i>	<i>Name of Learned Court</i>
1.	FIR no. 17 dated 14.01.2012, U/S 420, 465, 467, 468, 471, 120-B of IPC, PS Faridkot	04.08.2014	Convicted to undergo RI for 03 years and to pay a fine of Rs. 2000/- in default of payment of fine to further undergo RI of 02 months U/s 420 of IPC and to undergo RI or 03 years and to pay a fine of Rs. 2000/- in default of payment of fine to further undergo RI for 02 months U/S 471 of IPC	Dr. Rajneesh, Chief Judicial Magistrate, Faridkot
2.	Complaint case no. 39 of 12.09.2017, (The Superintendent, Central Jail, Bathinda vs. Charanjit Singh) U/s 9 of the Punjab Good Conduct Prisoner (Temporary Release), Act, 1962.	10.10.2017	Convicted and sentenced to undergo RI for 06 months	Sh. Vikrant Kumar, Chief Judicial Magistrate, Bathinda
3.	FIR no. 69 dated 20.07.2019, U/s 419, 420, 467, 468, 471, 472 of IPC, PS Division No. 2, Pathankot	22.04.2021	Convicted and sentenced to undergo RI for 01 year and fine of Rs. 500/- in default SI for 01 month U/s 419 IPC, to undergo RI for 01 year and fine of Rs. 500/- in default SI for 01 month U/s 420 of IPC, to undergo RI for 1.5 year and fine of Rs. 500/- in default SI for 01 month U/s 467 of IPC, to undergo RI for 1.5 year and fine of Rs. 500/- in default SI for 01 month U/s 468 of IPC, to undergo RI for 1.5 year and fine of Rs. 500/- in default SI for)1 month U/s 471 of IPC, to undergo RI for 1.5 year and fine of Rs. 500/- in default SI for 01 month U/s 472 of IPC	
4.	FIR no. 21 dated 21.02.2001, U/s 25 of Arms Act, PS Baghapurana.	29.04.2003	Convicted as sentence already undergone and fine Rs. 300/-.	Sh.A.K., Bansal, Judicial Magistrate 1 st Class, Moga.

<i>Sr. No.</i>	<i>FIR details</i>	<i>Date of decision</i>	<i>Conviction/Acquittal details</i>	<i>Name of Learned Court</i>
5.	FIR no. 48 dated 18.05.1993, U/s 326, 323, 34 IPC, PS Baghapurana.	24.12.1998	No details available (This FIR detail received from PS Smalsar on 23.04.2021)	No details available.
6.	FIR no. 88 dated 13.04.2019, U/s 384, 506 IPC, PS Sardulgarh	13.03.2020	Acquitted	Mrs. Harpreet Kaur, Sub Divisional Judicial Magistrate, Sardulgarh.
7.	FIR no. 155 dated 2.8.2000, U/s 399, 402 IPC & 25 of Arms Act, PS City Jagraon.	30.08.2003	Acquitted (This FIR detail received from PS Smalsar on 23.04.2021)	No details available.
8.	FIR no. 117 of 2000, U/s 302, 34 of IPC, PS City Jagraon.	27.05.2013	Acquitted (This FIR detail received from PS Smalsar on 23.04.2021)	No details available.

It is submitted that the petitioner already stands acquitted in case FIR No. 88 dated 13.04.2019 vide judgment dated 13.03.2020 passed by the Sub Divisional Judicial Magistrate, Sardulgarh. She contends that even in the other cases that were registered against the petitioner, he has either been acquitted or has already undergone the sentence so imposed upon him. She contends that even though the order rejecting the case of the petitioner seeking premature release has been decided on 05.08.2021, however, the respondent-authorities failed to take note of the fact that the petitioner already stands acquitted vide judgment dated 13.03.2020 which was passed nearly 1½ years prior to the order dated 05.08.2021. It is thus contended that the order has been passed in a mechanical manner and without considering the parameters prescribed in the Policy dated 08.07.1991 and/or noticing any impediment or embargo or prohibition

against the petitioner.

3. Per contra, learned State counsel has submitted that the petitioner suffers from many criminal antecedents and as such, the case of the petitioner was rightly rejected. It is also pointed out that the District Magistrate, Moga had not recommended the case of the petitioner for premature release and upon consideration thereof, it was rightly rejected. He further points out that on the earlier occasion of time, the petitioner was released on 27.04.2016 for a parole of six weeks and was directed to surrender on 09.06.2016, however, the petitioner did not surrender whereupon he was arrested on 09.04.2017 by the CIA Staff, Jagraon. Accordingly, Complaint Case No. 39 of 12.09.2017 under Section 9 of the Punjab Good Conduct Prisoner (Temporary Release) Act, 1962 was registered against him and the petitioner was ordered to undergo rigorous imprisonment for a period of six months by the Chief Judicial Magistrate, Bathinda. It is, however, not disputed that the petitioner has undergone actual custody of 17 years, 04 months and 15 days till 25.01.2022 and a total sentence of 19 years and 02 months including parole but excluding remissions. It is also not disputed that the petitioner has undergone the sentence of six months awarded in complaint case No. 39 by the Chief Judicial Magistrate for offence under Section 9 of the Punjab Good Conduct Prisoner (Temporary Release) Act, 1962

4. A prayer was thus made that as the petitioner did not maintain good conduct, he was, not eligible to be considered for his premature release.

5. I have heard learned counsel appearing on behalf of the respective parties and have gone through the facts of the instant case along

with documents appended by both the parties with their able assistance.

6. A perusal of the impugned order dated 05.08.2021, as well as the reply filed by the respondents establishes that as per the Jail Roll dated 25.01.2022, the convict had already completed his actual sentence/custody of 17 years, 04 months and 15 days. It is also apparent from the perusal of the order that as per the Policy dated 08.07.1991 [paragraph 4 (1) (C)], a convict was required to complete actual/total sentence of 10/14 years for being eligible for premature release. The petitioner was not convicted for any offence that has been categorized as a heinous crime with reference to Column C of the said Policy. Since the offence in question attributed to the petitioner did not fall in the category of heinous crime, he is entitled to be considered for premature release under the said Policy.

7. It is further evident that the case of the petitioner for premature release has been rejected also on account of the subsequent act of registration of FIR No. 88 dated 13.04.2019 against the petitioner. The same does not relate to the conduct of the petitioner while he was in jail and as such the said consideration being a subsequent event, could not have been taken into consideration by the authorities as per the precedent judgments of this Court.

8. It is a well settled proposition of law that a case for premature release of a convict has to be examined under the policy that was in force as on the date when the convict became eligible and entitled to claim consideration for premature release. The policy mandates that the conduct of the petitioner 'while in jail' shall be taken into consideration when dealing with his plea for premature release. 'Good conduct' means that the person has not committed any jail offence for a period of five years prior to the date

of his eligibility for consideration of release. The benefit of consideration for premature release cannot be denied for commission of any act which is subsequent. The involvement of the petitioner in case FIR No. 88 dated 13.04.2019 is a subsequent event and does not reflect on the conduct of the petitioner while in jail. The same could not have been taken into consideration while determining the entitlement of the petitioner for premature release as on the date when such a right accrued in favour of the petitioner. Chapter XIV of the Punjab Jail Manual deals with the procedure under Clause 431 for premature release. It is stated that the cases of premature release are to be considered provided that the convict has maintained good conduct in jail. For the said purpose “***good conduct means that he has not committed any jail offence for a period of 5 years prior to the date of his eligibility for consideration for release***”. Evidently, the conduct of the convict to be taken into consideration is the conduct while he was in jail and for a period of 5 years prior to his eligibility for consideration of premature release. Any conduct that does not relate to this period, while in jail or for a period prior or later than the period of 5 years before the date of his eligibility for consideration cannot be taken into consideration as per the Policy.

9. The Hon'ble High Court of Punjab & Haryana also affirmed the same in ***CRWP-9010-2020 titled as Gautam Kalia Vs. State of Punjab and Others decided on 11.02.2022*** and the relevant paragraphs are reproduced below:

"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."

10. Order rejecting the case of premature release of the petitioner dated 05.08.2021 is based on an event which was subsequent and much later than the date of his eligibility to be considered for premature release and is not connected to his conduct while in jail. The same thus could not have formed the basis of rejecting the case of the petitioner for premature release. Even otherwise, the petitioner stands acquitted in the said case on 13.03.2020 i.e. much prior to the impugned order.

11. In view of the matter, I find that the order dated 05.08.2021 passed by the respondent authorities is bad and liable to be set aside. The respondent authorities are further directed to reconsider the request of the petitioner for premature release in view of the policy circulated vide notification dated 08.07.1991. Till a fresh decision is taken in the matter by the competent authority, the petitioner shall be released on parole on his furnishing adequate surety to the satisfaction of the Superintendent of Jail, Faridkot. It is clarified that in the event of his request for premature release being declined by the authorities, the petitioner shall have to surrender

before the jail authorities on the receipt of the information regarding rejection of his request. During the time of parole, the petitioner shall not leave the territory of India without the permission of trial Court and shall not indulge in any nefarious activity.

12. The instant order directing release of the petitioner on parole is subject to release of the petitioner on parole/bail in any other pending case against the petitioner.

13. The petition is accordingly disposed off in terms of the aforesaid order.

(VINOD S. BHARDWAJ)
JUDGE

23.05.2022

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No