

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

CRWP-10007-2020

Reserved on: 02.04.2022

Pronounced on: 25.04.2022

Ashwani Kumar

...Petitioner

Versus

1. State of Punjab
2. Director General of Police, Jail Department, Punjab, Chandigarh
3. The Superintendent, Central Jail, Amritsar

...Respondents

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

Present: Mr. B.P.K. Brar, Advocate
for the petitioner.

Mr. Karanbir Singh, AAG Punjab.

VINOD S. BHARDWAJ J.

The instant Criminal Writ Petition has been filed under Article 226/227 of the Constitution of India for issuance of directions to the respondent-authorities to reconsider and decide the premature release case of the petitioner and to set aside the order dated 09.11.2015, vide which the request of the petitioner was dismissed.

2. Briefly summarized, the facts of the case are that the petitioner was arrested in connection with case FIR No. 493 dated 11.09.1991, registered under Section 302 of Indian Penal Code (hereinafter referred to as 'IPC'), Police Station Sadar Amritsar, District Amritsar. The petitioner was eventually convicted and sentenced to undergo life imprisonment and to pay a fine of Rs. 2000/-, in default

thereof, the petitioner was sentenced to undergo imprisonment for a period of 6

months, vide order dated 31.08.1994. The petitioner claims to have remained in jail continuously since 1991 and there was no complaint against his conduct as a convict. It is stated that as per the jail roll as on 29.10.2014, the petitioner had undergone an actual sentence of 23 years, 01 month and 01 day and a total sentence including the remissions of 28 years, 05 months and 18 days. It is also stated that in case of a heinous crime committed by a convict, he is required to complete a total conviction for 12/18 years as per para No. 4(1)(B) of the Policy dated 04.04.2013. The petitioner has further claimed to have filed Criminal Writ Petition No. 520 of 2014 for issuance of directions to the authorities to consider his case for premature release, which was decided vide order dated 15.09.2014 directing the respondents to consider the case and to pass appropriate order. The High Court also directed interim release of the petitioner during the pendency of the consideration for premature release by the respondent authorities. In compliance to the said order, petitioner was released on parole, however, during parole, the petitioner was implicated in FIR No. 04 dated 03.01.2015 registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act (hereinafter referred to as 'NDPS Act') at Police Station Islamabad, Amritsar and he was in custody since then. The case of the petitioner was thereafter rejected by the respondent authorities on the ground that the petitioner had committed an offence during parole. It was also reasoned that as per the premature release policy, if a convict commits jail offence, his premature release case will be reconsidered only after a period of 5 years, in case he maintains good conduct while

staying in jail. Since a period of 5 years has elapsed, the petitioner is entitled for seeking premature release and for consideration of his claim.

3. Notice of the petition was issued to the respondents. A short reply by way of affidavit of Mr. Baljeet Singh, PPS, Officiating Superintendent, Central Jail, Amritsar, was filed. While reiterating, the submissions noticed above, it was contended that in addition to the involvement of the petitioner in another case, he also did not surrender after the rejection of his case of premature release by Government of Punjab vide order dated 20.11.2015. He was admitted back in jail on 21.11.2019, after his arrest in case FIR No. 04 dated 03.01.2015 under Section 21 of NDPS Act. It is further submitted that as per the Premature Release Policy, 2017, previous five parole release reports of the convicts have to be good and the convict should not commit any offence during his parole and must surrender back in Jail on the due date for surrender. The petitioner did not fall under the Policy.

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 09.11.2015, as well as the reply filed by the respondents establishes that as per the Jail Roll dated 29.10.2014, the

and a total sentence of 28 years, 5 months and 18 days. It is also apparent from the perusal of the order that as per the Policy dated 04.04.2013 [para 4 (1) (B)] a convict was required to complete actual/total sentence of 12/18 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 B 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. 04 dated 03.01.2015 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. 04 dated 03.01.2015 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 09.11.2015 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.

11. In this view of the matter, I find that the order dated 09.11.2015 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 04.04.2013.

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, Amritsar. 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.

25.04.2022

Ajay Goswami

(VINOD S. BHARDWAJ)

JUDGE

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