

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

CRWP-11004-2021

Date of decision: 17th February, 2022

Daya Nand

.....Petitioner

Versus

State of Haryana and Others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Argued by: Mr. D.N.Ganeriwala, Advocate
for the petitioner.

Mr. Amreek Singh Narwal, DAG, Haryana

SANT PARKASH, J.

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

1. The petitioner has filed the present petition under Article 226 of the Constitution of India for directing the respondents to release the petitioner prematurely in view of the Govt. Policy dated 12.04.2002 (Annexure P-2) and quashing of order dated 19.10.2021 (Annexure P-5) whereby the case of the petitioner for his premature release has been deferred.

2. The petitioner along with other co-accused was arrested in case FIR No. 156 dated 03.12.1999 under Sections 302, 323, 324, 325 read with Section 34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act registered at Police Station Nathusari Chopta. 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 Sirsa vide order dated 17.05.2002.

3. Feeling aggrieved, the petitioner assailed the aforesaid judgment by filing appeal CRA-D-436-DB-2002 which was also dismissed vide order dated 01.11.2011.

4. The petition has been opposed by the respondents/State in terms of reply filed by way of affidavit of Jagjit Singh, Inspector General of Prisons, Haryana, O/o the Director General of Prisons, Haryana

5. Learned Counsel for the petitioner has submitted that the petitioner has undergone actual sentence of more than 10 years and total sentence of 14 years with remissions and the case of the petitioner falls under the category 2(b) of the Premature Release Policy dated 12.04.2002 of the Haryana Government. The respondents vide impugned order dated 19.10.2021 (Annexure P-5) have deferred the case of premature release of the petitioner for two years without citing any reason. Further detention of the petitioner is against the said Govt. policy and in violation of Article 21 of the Constitution of India. The petitioner is fulfilling all the conditions for grant of pre-mature release as per the Govt. Instructions (Annexure P-2) and the present petition be allowed and the petitioner be set at liberty forthwith.

6. On the other hand, learned State Counsel reiterating the contents of reply has submitted that the petitioner is not a law abiding person and remained involved in criminal offences repeatedly. The

petitioner cannot claim premature release as a matter of right and it is only a concession given by the State Government after considering the behaviour of the convict inside the jail, gravity, nature of offence, manner and circumstances under which the crime was committed. In support of his arguments learned Counsel for the State has placed reliance on judgments passed by Hon'ble Apex Court in '**Maru Ram Vs. Union of India**' AIR 1980 SC 2147, decided on 11.11.1980 ; '**Swami Shardhanand @ Murli Manohar Mishra Vs. State of Karnataka (SC) 2008(3) R.C.R. (Criminal) 772; W.P. (Crl.) No.48 of 2014 Union of India Vs. V. Sriharan @ Murugan & Ors. and SLP (Crl) No. 6467 of 2012 Crl. M.P. No. 17082 of 2012 titled State of U.P. Vs. Sanjay Kumar.**

7. Learned State Counsel has further submitted that on completion of 12 years, 4 months and 7 days actual sentence and 14 years, 4 months and 28 days total sentence as on 30.06.2021, the case of premature release of the petitioner was placed before the State Level Committee in its meeting held on 12.08.2021 for consideration. After considering the matter, the State Level Committee did not recommend the case of the convict for premature release keeping in view the nature of crime committed by the life convict as well as his involvement in three other grave criminal offences and his case for premature release was deferred for one year.

8. It has been mentioned in the premature release policy itself that no convict has fundamental right of remission or shortening of sentence and the State Government, in exercise of its discretionary

power of remission is to consider each case individually keeping in view all the relevant factors. The case for premature release of the petitioner will be re-considered after completion of one year subject to his good conduct during the deferred period after excluding the special parole period on account of Covid, if otherwise found eligible. 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 12.04.2002 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 deferred the case of the petitioner due to nature of crime committed by him and his involvement in three other grave criminal offences.

10. The petitioner along with his co-accused had committed the murder of Bhagwana Ram by firing shot from pistol, attacked with 'kassi' and also gave hockey stick blows on the left shoulder and left elbow of the complainant. The petitioner also remained involved in three other cases containing serious offences.

11. Hon'ble Apex Court in its judgments passed in **Maru Ram** and **Swami Shardhananad (Supra)** has held that a convict cannot claim premature release as a matter of right and it would be at the sole discretion of the Government to exercise the power conferred on it in accordance with law.

12. In **W.P. (Crl.) No.48 of 2014 Union of India Vs. V. Sriharan @ Murugan & Ors.** it was held that the powers under

Sections 432 and 433 of the Code of Criminal Procedure, 1973 are to be exercised by the Appropriate Government statutorily and it is not for this Court to exercise the said power and it is always left to be decided by the Appropriate Government.

13. Further, in case, **SLP (Crl) No. 6467 of 2012 Crl. M.P. No. 17082 of 2012 titled State of U.P. Vs. Sanjay Kumar** as relied upon by learned State Counsel, Hon'ble Supreme Court has held as under :-

“.....Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years, rather it always meant as the whole natural life. This Court has always clarified that the punishment so awarded would be subject to any order passed in exercise of the clemency powers of the President of India or Governor of State, as the case may be. Pardons, reprieves and remissions are granted in exercise of prerogative power. There is no scope of judicial review of such orders except on very limited grounds for example non-application of mind while passing the order; non-consideration of relevant material; or if the order suffers from arbitrariness.

The power to grant pardons and to commute sentences is coupled with a duty to exercise the same fairly and reasonably. Administration of justice cannot be perverted by executive or political pressure. Of course, adoption of uniform standards may not be possible while exercising the power of pardon. Thus, such orders do not interfere with the sovereign power of the State. More so, not being in contravention of any statutory or constitutional provision, the orders, even if treated to have been passed under Article 142 of the Constitution do not deserve to be labelled as unwarranted. The aforesaid orders have been passed considering the gravity of the offences in those cases that the accused would not be entitled to be considered for premature release under the guidelines issued for that purpose i.e. under Jail Manual etc. or even under Section 433-A Cr.P.C.....”

14. In the above referred judicial precedents, it has been held that the case of premature release of a life convict is governed by the

policy/guidelines of the Government and the gravity of the offence(s) of the accused are also to be considered for the purpose.

15. However, Hon'ble Apex Court in its judgment passed in **'State of Haryana and Ors. Vs. Jagdish** decided on 22.03.2010 has held as under :-

27. Nevertheless, we may point out that the power of the sovereign to grant remission is within its exclusive domain and it is for this reason that our Constitution makers went on to incorporate the provisions of Article 72 and Article 161 of the Constitution of India. This responsibility was cast upon the Executive through a Constitutional mandate to ensure that some public purpose may require fulfillment by grant of remission in appropriate cases. This power was never intended to be used or utilised by the Executive as an unbridled power of reprieve. Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way, wipe out the conviction. It is a power which the sovereign exercises against its own judicial mandate. The act of remission of the State does not undo what has been done judicially. The punishment awarded through a judgment is not overruled but the convict gets benefit of a liberalised policy of State pardon. However, the exercise of such power under Article 161 of the Constitution or under Section 433-A Cr. P.C. may have a different flavour in the statutory provisions, as short sentencing policy brings about a mere reduction in the period of imprisonment whereas an act of clemency under Article 161 of the Constitution commutes the sentence itself.

28. In **Epuru Sudhakar & Another v. Govt. of A.P. & Ors. AIR 2006 SC 3385** this Court held that reasons had to be indicated while exercising power under Articles 72/161. It was further observed (per Kapadia, J) in his concurring opinion:

"Pardons, reprieves and remissions are manifestation of the exercise of prerogative power. These are not acts of grace. They are a part of Constitutional scheme. When a pardon is granted, it is the determination of the ultimate authority that public welfare will be better served by inflicting less than what the judgment has fixed..."

Exercise of Executive clemency is a matter of discretion and yet subject to certain standards. It is not a matter of privilege. It is a matter of performance of official duty. It is vested in the President or the Governor, as the case may be, not for the benefit of the convict only, but for the welfare of the people who may insist on the performance of the duty....

Granting of pardon is in no sense an overturning of a judgment of conviction, but rather it is an Executive action that mitigates or sets aside the punishment for a crime...

The power under Article 72 as also under Article 161 of the Constitution is of the widest amplitude and envisages myriad kinds and categories of cases with facts and situations varying from case to case."

38. At the time of considering the case of pre-mature release of a life convict, the authorities may require to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict any more; the socio-economic condition of the convict's family and other similar circumstances.

39. Considerations of public policy and humanitarian impulses - supports the concept of executive power of clemency. If clemency power exercised and sentence is remitted, it does not erase the fact that an individual was convicted of a crime. It merely gives an opportunity to the convict to reintegrate into the society. The modern penology with its correctional and rehabilitative basis emphasis that exercise of such power be made as a means of infusing mercy into the justice system. Power of clemency is required to be pressed in service in an appropriate case. Exceptional circumstances, e.g. suffering of a convict from an incurable disease at last stage, may warrant his release even at much early stage. '*Vana Est Illa Potentia Quae Nunquam Venit In Actum*' means-vain is that power which never comes into play.

40. Pardon is an act of grace, proceedings from the power entrusted with the execution of the laws, which exempts

the individual on whom it is bestowed from the punishment which law inflicts for a crime he has committed. Every civilised society recognises and has therefore provided for the pardoning power to be exercised as an act of grace and humanity in appropriate cases. This power has been exercised in most of the States from time immemorial, and has always been regarded as a necessary attribute of sovereignty. It is also an act of justice, supported by a wise public policy. It cannot, however, be treated as a privilege. It is as much an official duty as any other act. It is vested in the Authority not for the benefit of the convict only, but for the welfare of the people; who may properly insist upon the performance of that duty by him if a pardon or parole is to be granted.... "

16. In view of the above judicial precedent, it has become clear that pardons, reprieves and remissions are manifestation of the exercise of prerogative power. These are not acts of grace and are a part of Constitutional scheme . It is as much an official duty as any other act which is vested in the Authority not for the benefit of the convict only, but for the welfare of the people; who may properly insist upon the performance of that duty by him if a pardon or parole is to be granted.

17. On perusal of the impugned order (Annexure P-5) it is seen that the Government has deferred the case of the petitioner keeping in view the nature of crime committed by the life convict as well as his involvement in three other grave criminal offences. It is pertinent to mention here that out of three other criminal cases, the petitioner was acquitted in two such cases and in one case his sentence has been undergone.

18. In the present case, the petitioner was convicted for sentence to life on 17.05.2002. Hence, the premature policy dated 12.04.2002 is applicable upon the petitioner.

Clause 2(b) of the said policy reads as under :-

(b) Adult life convicts who have been imprisoned for life but whose cases are not covered under (aa) and (a) above and who have committed crime which are not considered heinous as mentioned in clause (aa) and (a) above	Their cases may be considered after completion of 10 years actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 14 years.
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19. As per the reply submitted by the respondent/State, the petitioner has undergone 12 years, 9 months and 29 days of actual sentence and 14 years, 6 months and 20 days of total sentence including remissions as on 21.12.2021 and the case of the petitioner falls within the ambit of the aforesaid clause of premature policy dated 12.04.2002.

20. The case of the petitioner has been rejected/deferred for one year for re-consideration in view of the nature of crime and due to his involvement in three other criminal cases.

21. Hon'ble Apex Court in its case **Criminal Appeal No. 30 of 2005** titled as “**State of Haryana Versus Mahender Singh and Others**” decided on **02.11.2007**, has held as under :-

32. A right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder. Although no convict can be said to have any constitutional right for obtaining remission in his sentence, he in view of the policy decision itself must be held to have a right to be considered therefor. Whether by reason of a statutory rule or otherwise if a policy decision has been laid down, the persons who come within the purview thereof are entitled to be treated equally. It is now well-settled that any guidelines which do not have any statutory flavour are merely advisory in nature. They cannot have the force of a statute. They are subservient to the legislative act and the statutory rules.
33. Whenever, thus, a policy decision 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.

22. In view of the above referred judicial precedent, this fact is not disputed that whenever a policy decision regarding remission of sentence is made, persons must be treated equally in terms thereof and the case of the petitioner for his premature release is to be considered equally with other cases of life imprisonment where murder has been committed and the life convicts were released pre-maturely on their fulfillment of the criteria/conditions of the policy/instructions of the State Government.

23. With regard to his involvement in other three cases, as discussed above, the petitioner was acquitted in two such cases and his sentence was undergone in one case.

24. Further, as per Clause 4(i) of the pre-mature release policy dated 12.04.2002, 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.

25. On glancing through the reply filed on behalf of the respondent, it has become clear that the petitioner has not committed any offence during the last five years and nothing is adverse against him during the said period. His involvement in three other criminal cases is no valid ground to deny him the benefit of premature release as per the policy of the State Government particularly when he was acquitted in two of such cases and his conviction was undergone in the

third case.

26. In view of the above, the present petition is allowed and the impugned order dated 19.10.2021 (Annexure P-5) is set aside.

27. The petitioner be set at liberty forthwith, if not required in any other case.

17 th Feburary, 2022
kavneet singh/avin

(SANT PARKASH)
JUDGE

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