

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRWP-11955-2021

Date of Decision:22.02.2022

Nirmal Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. D.N. Ganeriwala, Advocate,  
for the petitioner.

Mr. Amreek Singh Narwal, DAG, Haryana.

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court.]

**SANT PARKASH, J.**

Present petition under Article 226/227 of the Constitution of India read with Section 482 Cr.P.C is for quashing impugned order dated 10.10.2021 (P-5) passed by respondent No.1, whereby prayer for grant of premature release has been deferred for five years despite fulfilling the conditions mentioned in the Premature Release Policy dated 04.02.1993 (P-3) & 17.07.1997 (P-4).

The petitioner was arrested in case FIR No. 187 dated 10.06.1993 under Sections 302/34 of the Indian Penal Code, 1860 registered at Police Station Sadar, District Sonapat. The petitioner was tried for the aforesaid offences and after completion of trial, the petitioner was convicted by the Court of learned Sessions Judge, Sonapat vide order dated 03.05.1997 and he was sentenced to death imprisonment vide order dated 05.05.1997. Aggrieved against the said judgment, the appellant preferred an

appeal before this Court, which was also dismissed by this Court. Hon'ble the Supreme Court vide judgment dated 18.03.1999 converted the death sentence into life imprisonment.

Learned counsel for the petitioner submitted that the petitioner was convicted on 03.05.1997, therefore, the policy dated 04.02.1993 & 17.07.1997 (amended) would be applicable for considering the case of premature release. As per the policy, the case of the petitioner may be considered after completion of 14 years of actual sentence including under trial period and after earning at least 06 years remissions. He further contended that the petitioner has already undergone more than 18 years of actual sentence and more than 06 years and 02 months of remission. However, the premature release case of the petitioner was deferred for five years by respondent No.1 keeping in view the nature of crime committed by the petitioner and absconding from parole for more than 10 years. He also submitted that as the petitioner absconded from parole for more than 10 years, he was already convicted and sentenced for such offence. He also submitted that since the petitioner has already undergone more than the required sentence, his further detention in jail is illegal.

On the other hand, learned State Counsel has strongly opposed the present petition on the ground that the petitioner had committed a heinous crime. He next submitted that the date of conviction of the petitioner is 03.05.1997 therefore, policy dated 04.02.1993 would be applicable for considering the case of premature release. As per the offence committed by the petitioner, his case falls within clause 2(a) of the Policy dated 04.02.1993, which prescribes completion of 14 years of actual sentence and not less than 20 years with remissions. He further submitted

that the petitioner absconded from parole for 10 years and 05 months. He also submits that in view of the nature of crime committed by the petitioner and misusing the concession of parole, the State Level authority deferred his premature release for five years.

This Court has heard the learned counsel for the parties and perused the case file including the relevant Premature Release Policy.

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 petitioner, the Premature Release Policy dated 04.02.1993 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.

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. 03.05.1997, the prevailing policy for pre-mature release of convicts was Premature Release Policy dated 04.02.1993.

As per this policy, for considering the case of premature release, the condition required for life convict was to undergo 14 years of actual sentence including under-trial period provided of such sentence including remissions is not less than 20 years.

A perusal of the case file including the reply filed by the State, it would be revealed that as on today, i.e. at the time of decision of the case, the petitioner has already undergone more than 18 years of actual sentence and 24 years and 09 months of total sentence including remissions, which could not be disputed by the learned State counsel. However, the competent authority has rejected the case of the petitioner on account of the fact that the petitioner committed the murder of five persons in gruesome manner with extreme brutality and the fact that he absconded from parole for 10 years and 05 months.

It is apparent from the reply filed by the State that there is no dispute as to the eligibility of the petitioner for consideration of his case for premature release. The stand taken by the State in the reply is that since the petitioner committed the murders in gruesome manner, therefore, the case of the petitioner was deferred for five years. It is nowhere stated in the reply that the case of the petitioner does not fall in the category as mentioned in the policy rather it speaks that the petitioner has undergone the requisite sentence. There is no reasonable basis for classification of person(s) who had committed one murder or more than two murders.

In **Mahender Singh's** case (supra), this Court observed that

the petitioners have been found guilty for the commission of three murders. However, the imprisonment for life was imposed on each one of them by the trial court on three counts. The said imprisonment awarded on three counts was ordered to run concurrently. So no discrimination could be done on the basis of classification of two murders or three murders. There was no valid basis for the classification because Article 14 of the Constitution of India provides equality before law. It was also held that the provision of the policy is discriminatory and violative of Articles 14, 19 and 20 of the Constitution of India. Hence, the petitioner in this case is also required to be treated at par and is entitled to the same/similar treatment for the purpose of premature release. The relevant part of the said judgment is reproduced hereunder:-

*“.....The Punjab Government had, vide letter Annexure P-5 dated 29.1.2000, clarified that uniform policy had to be pursued regarding pre-mature release of convicts in case of double murders/multi-murders as it was not defined as heinous crime in the said policy. Thus, the policy of the Haryana Government that if a convict is involved in the murder of more than two persons, then he is to be considered for pre-mature release after completion of 20 years of sentence including undertrial period, provided that the total period of such sentence, including remissions, is not less than 25 years, is discriminatory and violative of Articles 14, 19 and 20 of the Constitution of India. The fact that sentences are made to run concurrently under Section 427 Cr.P.C. is to be extended to the theory that murder of more than one person is to be treated at par with the murder of single person.”*

So far as the plea of learned counsel for the State that the petitioner absconded from the parole for 10 years and 05 months is concerned, it is not disputed that the petitioner has already been punished

for that by awarding sentence. Moreover, 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 into consideration while considering his case for grant of pre-mature release as the convict will have to face consequences for jail offence separately. 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.

In view of the above, the present writ petition is allowed. The petitioner be set at liberty forthwith, if is not required in any other case.

22.02.2022  
mks /avin

(SANT PARKASH)  
JUDGE

Whether Speaking/Reasoned: YES / NO  
Whether Reportable: YES / NO