

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

Date of decision : 22.02.2022

1.

CRWP-1393-2019

Parmod

... Petitioner

Versus

The State of Haryana and others

... Respondents

2.

CRWP-1271-2020

Jai Parkash

... Petitioner

Versus

The State of Haryana and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Randeep S. Dhull, Advocate
for the petitioner in CRWP-1393-2019.

Mr.Gaurav Singla, Advocate
for the petitioner in CRWP-1271-2020.

Mr.Munish Sharma, AAG, Haryana.

(Through Video Conferencing)

VIKAS BAHL, J.(ORAL)

The present order will dispose of above said two criminal writ petitions filed under Articles 226/227 of the Constitution of India for quashing the respective orders vide which the case of the petitioners for pre-mature release has been rejected.

The first petition, i.e. CRWP-1393-2019 has been filed by Parmod in which the challenge is to the order dated 13.09.2019 (Annexure P-1) and the second petition, i.e. CRWP-1271-2020 has been filed by Jai Parkash in which the challenge is to the order dated 11.11.2019 (Annexure P-1).

Learned counsel for the petitioners in both the petitions as well as th State counsel are *ad idem* on the fact that the reasons given for rejection in both the impugned orders are the same and the arguments to be addressed are also the same, thus, both the matters would be considered together. Learned counsel for respective parties have further submitted that the case of Parmod, i.e. CRWP-1393-2019 be treated as the lead case and the facts be taken from the same for consideration.

Learned counsel for the petitioner has submitted that in the present case, the petitioner had applied for pre-mature release and vide the impugned order, the case of the petitioner for pre-mature release was considered as per the policy dated 13.08.2008 and the same was rejected on the basis of Clause (a)(x) of the policy of 2008. He has further submitted that the case of the petitioner should be considered on the basis of the policy dated 12.04.2002 (Annexure P-2) which as per the petitioner has been issued under Article 161 of the Constitution of India, and not under the policy dated 13.08.2008, which has been framed by the Haryana Government in exercise of the powers conferred by the sub section (1) of Section 432 read with section 433 of the Code of Criminal Procedure, 1973. He has further submitted that although the date of the conviction of the petitioner is 10.10.2009 and the date of order of sentence is 15.10.2009, and the said dates are subsequent to the policy dated 13.08.2008, but it

would be the policy dated 12.04.2002 which would govern the case of the petitioner. For the same, the petitioner has relied upon the judgment of the Hon'ble Supreme Court of India in ***State of Haryana and others vs. Jagdish, (2010) 4 SCC 216*** and specific reference has been made to para 42 of the said judgment. The said para is reproduced hereinbelow:-

“42. We have already noticed that the earlier policies including the policy dated 04.02.1993 refers to the exercise of powers under [Article 161](#) of the Constitution whereas the policy dated 13.08.2008 is in exercise of the powers under [Section 432](#) read with [Sections 433](#) and [433-A](#) of Cr. P.C. The restriction under [Section 433-A](#) is only to the extent of the powers to be exercised in respect of offences as referred to under [Section 432](#) Cr.P.C. The notification dated 13.08.2008 is, therefore, under a rule of procedure, which is subordinate to the Constitution. The power exercised under [Article 161](#) of the Constitution is obviously a mandate of the Constitution and, therefore, the policy dated 13.08.2008 cannot override the policy dated 04.02.1993.”

Learned counsel for the petitioner by placing reliance upon the said judgment, has argued that the policy framed under Section 432 read with Sections 433 and 433-A of the Cr.P.C. cannot override the policy which has been framed under Article 161 of the Constitution of India.

Learned State counsel, on the other hand, has vehemently opposed the present petition and has submitted that in the present case, the date of conviction being subsequent to the date of the policy dated 13.08.2008, it is the policy of 13.08.2008 which would govern the present case and the impugned order has been rightly passed, considering the said policy of 2008. He has further submitted that a perusal of the said policy

framed in supersession of all the earlier policies including government memo dated 12.04.2002. He has further submitted that as per clause (a) (x) of the said policy, which is applicable in the present case, the period of actual sentence undergone by the petitioner does not meet the criteria as is required by the policy under the said clause, so as to be considered for premature release. It is also argued that the policy dated 12.04.2002 has not been issued under Article 161 of the Constitution of India. Reliance has been placed upon the judgment passed by the Constitutional Bench of the Hon'ble Supreme Court in case W.P. (Crl.) no.48 of 2014 titled as “***Union of India vs. V.Sriharan @ Murugan & Ors***”. The relevant portion of the said judgment is reproduced hereinbelow:-

“The exercise of power under Sections 432 and 433 of the Code of Criminal Procedure will be available to the Appropriate Government even if such consideration was made earlier and exercised under Article 72 by the President or under Article 161 by the Governor. As far as the application of Article 32 of the Constitution by this Court is concerned, it is held that the powers under Section 432 and 433 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.”

This Court has heard learned counsel for the parties and has perused the paper book.

It is not in dispute that Parmod (petitioner in CRWP-1393-2019) and Jai Parkash (petitioner in CRWP-1271-2020), along with other accused, were convicted by the Additional Sessions Judge, Faridabad vide judgment dated 10.10.2009 under Sections 302 read with Section 34 IPC

Under Section:

302/34 All the three Convicts/ accused namely Parmod, Mukesh and Jai Parkash are sentenced for rigorous imprisonment for life alongwith fine of Rs.5000/- each for the commission of offence punishable under section 302 read with Section 34 of the Indian Penal Code. In default of making the payment of fine, accused shall further undergo imprisonment for a period of six months.

452/34 All the convicts/ accused namely Parmod, Mukesh, Jai Parkash are sentenced for rigorous imprisonment for two years alongwith fine of Rs.2500/- each for the Commission of offence punishable under section 452 read with Section 34 of the Indian Penal Code. In default of making the payment of fine, accused shall further undergo imprisonment for a period of three months.

However, all the sentences shall run concurrently.”

The appeal filed by the petitioners in both cases against the said judgment of conviction has also been dismissed by Division Bench of this Court vide order dated 20.03.2013.

The impugned orders have been passed by placing reliance on clause (a) (x) of the policy dated 13.08.2008, which has been taken to be applicable to the petitioner by keeping in view the date of his conviction. Clause (a) (x) of the said policy is reproduced hereinbelow:-

<i>(a) Convicts whose death sentence has been commuted to life imprisonment and convicts who have been imprisoned for life having committed a heinous crime such as:-</i>	<i>Their cases for pre-mature release may be considered after completion of 20 years actual sentence and 25 years total sentence with remissions.</i>
<i>xxx</i>	

<i>(a) Convicts whose death sentence has been commuted to life imprisonment and convicts who have been imprisoned for life having committed a heinous crime such as:-</i>	<i>Their cases for pre-mature release may be considered after completion of 20 years actual sentence and 25 years total sentence with remissions.</i>
<i>(x) convicts who cannot for some definite reasons be prematurely released without danger to public order and safety.</i>	

A perusal of the impugned order would show that both the petitioners along with the other co-accused had been convicted for the murder of one Risal Singh, 70 years old man, who was a witness against the petitioners' co-accused (Brahamjit and Beer Singh), who had murdered seven persons. It was observed in the impugned order that it was apparent that the petitioner had no respect for law and was a danger to the society and that the murder of a witness was a direct attack on the criminal justice system and letting him off lightly could have a demoralizing effect on the society too and had, thus observed that the case of the petitioner would be reconsidered for premature release after he would have undergone 20 years of actual sentence and 25 years of total sentence as per clause (a) (x) of the pre-mature release policy dated 13.08.2008. It was further observed that the petitioner, on the date of passing of the impugned order, had undergone 16 years 9 months and 21 days of actual sentence and total sentence of 20 years which was lesser than the said requirement as stipulated under clause (a)(x). Even as on present date, the sentence undergone by the petitioner is lesser than the period of sentence which he is required to have undergone to be considered as per clause (a) (x) of the policy dated 13.08.2008. It was

further observed in the impugned order that no convict has a fundamental

right of remission and it is the State Government which has to exercise its executive / discretionary power of remission, keeping in view all the relevant factors under consideration in each individual case and thus, the case of the petitioner for premature release was rejected. The impugned orders (in both the present petitions) have been passed after taking into consideration all the relevant factors. The policy dated 13.08.2008 has not been challenged by either of the petitioners in either of two cases. Even clause (a) (x) of the policy has not been challenged, nor any argument has been raised to the effect that the said clause is illegal or against the law in any way. The sole argument raised on behalf of the petitioners is to the effect that it is the policy dated 12.04.2002, which should be made applicable to these cases and not the policy of 13.08.2008. The said argument has no merit and deserves to be rejected. The Hon'ble Supreme Court of India in latest judgment in ***“The State of Haryana & Ors. vs. Raj Kumar @ Bittu”*** reported as ***2021(9) SCC 292***, after considering the judgment of the Hon'ble Supreme Court of India in ***State of Haryana vs. Jagdish, (2010) 4 SCC 216***, has held as under:-

3. The relevant provisions of the Constitution and [the Code](#) read as thus:

Constitution of India

“[Article 161](#) – Power of Governor to grant pardons etc., and to suspend, remit or commute sentences in certain cases. - The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

Code of Criminal Procedure 1973

432. Power to suspend or remit sentences. - (1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) xxxx xxxx

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and—

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) xxxx xxxx

(7) In this section and in Section 433, the expression “appropriate Government” means—

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under, any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is

passed.

433. Power to commute sentence. - The appropriate Government may, without the consent of the person sentenced, commute—

(a) a sentence of death, for any other punishment provided by [the Indian Penal Code](#) (45 of 1860);

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine.

433-A. Restriction on powers of remission or commutation in certain cases. - Notwithstanding anything contained in [Section 432](#), where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted under [Section 433](#) into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment .”

4. The issue arising in the present appeals is regarding applicability of policy dated 12.4.2002 or the policy dated 13.8.2008 to the prisoner convicted on 25.3.2010. This Court in [State of Haryana & Ors. v. Jagdish](#) inter-alia held (para 52) that the policy dated 4.2.1993 refers to the exercise of powers under [Article 161](#) of the Constitution whereas the policy dated 13.8.2008 is in exercise of the powers conferred under [Section 432](#) read with [Sections 433](#) and [433-A](#) of the Code. The said policy is a rule of procedure, thus, subordinate to the Constitution. The power exercised under [Article 161](#) is a

mandate of the Constitution, therefore, the policy dated 13.8.2008 cannot override the policy dated 4.2.1993. It is the said finding which is required to be examined in the present appeals, though in the context of similar later policy dated 12.4.2002.

xxx xxx xxx

5. In Jagdish, this Court did not approve the judgment of this Court in [Sadhu Singh & Ors. v. State of Punjab \(1984\)2 SCC 310](#) wherein it was held that these policies are executive instructions. Instead, this Court approved the judgment of this Court reported as [State of Haryana v. Mahender Singh & Ors.](#) (2007) 13 SCC 606 wherein it was held that these policies of remission are in exercise of the powers conferred under [Section 59\(5\)](#) of the Prisons Act, 1894, contemplating “for the award of marks and the shortening of sentences” and thus, they are statutory rules. [Sections 401](#) and [402](#) of the Code were not empowering the appropriate Government to issue general or special orders and the conditions on which petitions for premature release should be presented and dealt with. The [Sections 432](#) and [433](#) of the Code had corresponding provisions in [Sections 401](#) and [402](#) of the Code but sub-section (5) of [Section 432](#) empowers an appropriate Government to issue general or special orders. Therefore, after the commencement of [the Code](#) on 1.4.1974, the power to issue general or special orders allowing remissions is traceable to [Section 432](#) of the Code. Hence, the policies issued thereafter are statutory in nature, having being framed in exercise of powers conferred on appropriate Government under [Section 432](#) of the Code.

xxx xxx xxx

14. Still further, it is the consistent view of this Court that the policy prevalent at the time of conviction shall be taken into consideration for considering the

premature release of a prisoner. In Jagdish, while determining the policy which would be applicable for the remission of sentence, this Court held as under:

“27. In Mahender Singh, this Court as referred to hereinabove held that the policy decision applicable in such cases would be which was prevailing at the time of his conviction. This conclusion was arrived on the following ground: (SCC p. 619, para 38)

38. 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.”

15. The policy of premature release dated 13.8.2008 was issued in the name of the Governor and was published in the official Gazette. Such notification is said to have been issued in exercise of the powers conferred under sub-section (1) of [Sections 432 and 433](#) of the Code. Keeping in view the principles of law enunciated above, such policy is in exercise of the powers conferred on the appropriate Government in terms of the provisions [of the Code](#) and is thus statutory in nature. The other policy dated 12.4.2002 is in fact a memo issued by the Financial Commissioner and Secretary to Government, Haryana, Jails Department, Chandigarh to the Director General of Prisons, Haryana, Chandigarh. Such policy of premature release would again be traceable to the provisions [of the Code](#).

16. Mr. Nikhil Goel, learned Additional Advocate General for the State of Haryana, submitted that different policies have been issued from time to time

and the later policy has superseded the earlier one, so there was no hiatus when a policy of premature release was not in operation or at any given point of time, the two policies were operational. The argument of Mr. Goel merit acceptance inasmuch as the policy dated 12.4.2002 is in supersession of earlier policy circulated on 8.8.2000 substituted later on 23.2.2001. The policy dated 13.8.2008 has substituted the earlier policy dated 12.4.2002 and such policy has been published on behalf of the Governor of the State. The policy dated 13.8.2008 has been issued in exercise of powers conferred by sub-section (1) of [Section 432](#) read with [Section 433](#) of the Code and in supersession of Government Memorandum dated 12.4.2002 and all other policies. The policy dated 13.8.2008 is a statutory policy. The said policy cannot and has not tried to take over the discretion vested in the Hon'ble Governor to grant pardons, remissions or commute sentence in exercise of powers conferred under [Article 161](#) of the Constitution but it is the policy issued under a Statute and therefore, such policy has a statutory force. The policy dated 12.4.2002 is again a statutory policy and cannot be put at a higher pedestal than the policy dated 13.8.2008 for the reason that it seeks approval from the Hon'ble Governor. Such policy has been specifically superseded on 13.8.2008, ceases to be operative for the convicts who are convicted after 13.8.2008.

xxx xxx xxx

20. The clause 2(c) of the policy dated 13.8.2008 deals with the convicts who have been imprisoned for life having committed a crime which is defined in [the Indian Penal Code, 1860 \(IPC\)](#) as punishable for life imprisonment but not with death sentence. The cases of such prisoners can be considered after completion of 10 years of actual sentence including undertrial period

provided the total period of such sentence including remission is not less than 14 years. The distinction is that in such cases, the remission is taken into consideration whereas, the remissions earned by a prisoner convicted for an offence under [Section 302 IPC](#), an offence punishable with death, cannot be considered for premature release. If such a prisoner is to be considered for premature release in the cases of life imprisonment for an offence under [IPC](#), the bar under [Section 433-A](#) of the Code would not apply. The judgment in Jagdish has to be read in the light of the distinction which we have drawn between the power exercised by the Hon'ble Governor and the power to be exercised by the State Government.

xxx xxx xxx

22. Consequently, the directions issued by the learned Single Bench are not sustainable and are hereby set aside.

23. The prisoner herein has completed 12 years and 25 days as on 6.7.2021 as per the custody certificate produced by the State. The case for premature release of the prisoner in terms of the policy of the State Government dated 13.8.2008, the policy which was applicable on the date of his conviction, can be considered only after he completes 14 years of actual imprisonment. However, the State Government can consider the prisoner in question for premature release after undergoing imprisonment for less than 14 years only under [Article 161](#) of the Constitution.”

A perusal of the above judgment would show that the same policies, i.e. policies dated 12.04.2002 and 13.08.2008, as are sought to be relied upon by the contesting parties in the present case were under consideration in the above judgment passed by the Hon'ble Supreme Court

of India. After considering the entire law and judgments on the said point, the Hon'ble Supreme Court of India came to the conclusion that the policy which is to be considered and made applicable to a convict's case for premature release, is the policy which was prevalent at the time of his conviction. It was further observed that even the policy dated 12.04.2002 was in fact a memo issued by the Financial Commissioner and Secretary to Government, Haryana, Jails Department, Chandigarh to the Director General of Prisons, Haryana, Chandigarh and such policy of premature release would again be traceable to the provisions of the Code of 1973 and is thus, a statutory policy. It was also held that the policy dated 13.08.2008 had substituted the earlier policy dated 12.04.2002 published on behalf of the Governor of the State, and the policy dated 13.08.2008 had been issued in exercise of the powers conferred by the sub section (1) of section 432 read with section 433 of the Code and in supersession of Government Memo dated 12.04.2002 and all other earlier policies, and the said policy of 13.08.2008 was a statutory policy and has statutory force and the policy dated 12.04.2002 cannot be put a higher pedestal than the policy dated 13.08.2008 for the reason that it seeks approval from the Hon'ble Governor and the said policy having been specifically superseded by the policy dated 13.08.2008, would cease to operate for the convicts who have been convicted after 13.08.2008.

Thus, in view of the observations made by the Hon'ble Supreme Court of India, in the judgment reproduced hereinabove, it is apparent that it is the policy dated 13.08.2008 which would be relevant and applicable in the present cases and the policy dated 12.04.2002, sought to be relied upon by the learned counsel for the petitioners in both cases, would

not be applicable as the same stands superseded, and it is the policy of 13.08.2008 which was prevalent at the time of the passing of judgment of conviction dated 10.10.2009 and passing of the order of sentence dated 15.10.2009.

Keeping in view the above said facts and circumstances, this Court is of the opinion that the impugned orders in both the cases have been rightly passed and thus, the same deserve to be upheld and both the present petitions deserve to be dismissed. Accordingly, both the petitions are dismissed and the impugned orders dated 13.09.2019 in CRWP-1393-2019 and 11.11.2019 in CRWP-1271-2020 are upheld.

(VIKAS BAHL)
JUDGE

February 22, 2022
Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No