

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-1576-2019

Date of Decision:11.02.2022

Vakil Singh @ Ajaib Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Vishal Nehra, Advocate,
for the petitioner.

Mr. Amreek Singh Narwal, DAG, Haryana.

Mr. Sanjay Vashisth, Senior Panel Counsel
for respondent-UOI.

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

SANT PARKASH, J.

The instant petition has been preferred under Article 226 of the Constitution of India praying for issuance of direction to the respondents to initiate and consider the case for premature release of the petitioner in FIR No.89 dated 16.07.1994 under Sections 302/212/449/120-B/34 of IPC and Section 25 of the Arms Act, registered at Police Station Sadar Ambala, whereby the petitioner was convicted and sentenced to undergo life imprisonment vide order dated 05.02.1997 passed by the learned CBI Court.

The Criminal Appeal No.295-DB-1997 filed by the petitioner against the judgment/order of conviction & sentence has been dismissed by this Court vide its judgment dated 06.08.2015.

Learned counsel for the petitioner has stated that the petitioner is entitled to be released prematurely as he has already undergone the required sentence for premature release in view of the policy bearing memo No.36/135/91 IJJ (II) dated 12.04.2002 regarding premature release of the life convicts in exercise of the powers conferred under Sections 432, 433 and 433(A) of Cr.P.C. and Article 161 of the Constitution of India. 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 counsel for the State assisted by the learned counsel for the Union of India has submitted that the petitioner was convicted and sentenced by the CBI Court, hence as per Section 435(1) of the Code of Criminal Procedure, 1973, the State Government was required to consult the Central Government for premature release of the petitioner. The Central Government vide Memo dated 07.04.2017 (R-2) did not give consent for premature release of the petitioner due to gravity of offence. That after considering the said order dated 07.04.2017, the State Government rejected the representation of the petitioner vide order dated 17.05.2017 (R-3). He further contended that the State is not bound to release the petitioner, without the consultation/concurrence of the Central Government. He further contended that the policy prevalent at the time of conviction of the convict would be applicable for considering the premature case of the petitioner. He also submitted that the premature case of the petitioner will be re-considered as per the consultation/concurrence from the Ministry of Home Affairs, Government of India as per Section 435 Cr.P.C., if otherwise found eligible.

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. 05.02.1997, 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, the petitioner has already undergone more than 16 years and 09 months of actual sentence and 23 years of total sentence including remissions, which is admitted by the learned State counsel. However, the concerned authority has rejected the case of the petitioner without recording any definite reason. Thus, the case of the petitioner is squarely covered as per the said policy dated 04.02.1993. As such, the petitioner is entitled to be released prematurely.

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.

11.02.2022
mks

(SANT PARKASH)
JUDGE

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