

**(126) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRWP-2251-2019

Date of decision : 25.04.2022

Pawan Kumar

... Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Akshay Rana, Advocate for the petitioner.

Mr. Sandeep Singh Deol, Deputy Advocate General, Punjab.

JASJIT SINGH BEDI, J. (ORAL)

The present petition under Article 226 of the Constitution of India has been filed praying for the issuance of an appropriate order or direction, directing the respondents to release the petitioner forthwith prematurely on usual terms and conditions as per Govt. Instructions dated 08.07.1991 (Annexure P-1) as further the detention of the petitioner in jail would be illegal, arbitrary and discriminatory with a further prayer to consider the case of the petitioner for the grant of premature release in terms of the Policy (Annexure P-1). It is still further prayed that during the pendency of this case, the petitioner be released to interim bail/parole.

2. The brief facts of the case are that the petitioner was arrested in FIR No.177 dated 24.10.1996 registered under Sections 302, 307, 392, 34 IPC and under Sections 25 and 27 of Arms Act, Police Station Kotwali, District Bathinda and tried for the said offences and ultimately convicted under Sections 302 and 392 read with Section 34 IPC and sentenced to undergo imprisonment for life by the learned

Additional Session Judge, Bathinda on 10.10.2020. Thereafter, the petitioner assailed the impugned judgment vide Criminal Appeal No.638-DB-2000 which was dismissed by this Court on 28.11.2009.

3. The Punjab Government has issued Instructions dated 08.07.1991 regarding premature release of the life convicts while exercising the powers conferred under Sections, 432, 433 and 433(A) of Cr.P.C. and Article 161 of the Constitution of India. It has been provided in the Government instructions that where the death sentence has been commuted into life imprisonment the case will be considered after undergoing 14 years actual sentence and with remission 20 years and in the case of heinous crimes, his case would be considered after undergoing 12 years actual sentences and 18 years with remissions and further in a simple murder case after 10 years and with remissions 14 years.

4. As per the learned counsel, the petitioner had already undergone more than 13 years actual sentence of imprisonment and more than 17 years sentence including remissions. However, as per policy dated 08.07.1991 (Annexure P-1), he was required to undergo 10 years actual sentence and including remissions 14 years.

5. As per Government Instructions (Annexure P-1), the petitioner was required to undergo rigorous imprisonment for 10 years actual sentence and with remissions 14 years. The petitioner had undergone more than the prescribed of actual sentence and with remissions, therefore, the further detention of the petitioner in jail is illegal, arbitrary, discriminatory and against the Government Policy (Annexure P-1).

6. The case of the petitioner for grant of premature had not been considered by the Government on the ground that the petitioner had committed jail offences.

7. The petitioner was fulfilling all the conditions for grant of premature release as per the Government Instructions dated 08.07.1991 (Annexure P-1). Therefore, his case for grant of premature release should have been initiated as per Government Instructions by the concerned District authorities.

8. The petitioner made a request for initiation of his case for grant of premature release in terms of Government policy (Annexure P-1) dated 08.07.1991 but the respondent Nos.2 and 3 did not recommend his case on the ground of having committed a jail offence. The petitioner also served a legal notice (Annexure P-2) dated 01.10.2019 for considering his case in terms of Government policy (Annexure P-1) and in view of law laid down by Hon'ble Supreme Court of India and this Court but the respondents neither considered his case nor was any reply given.

9. Since, the petitioner fulfilled all the conditions of the Government Instructions, therefore, the action of the respondents is not initiating the case of the petitioner for grant of premature release was highly illegal, arbitrary, discriminatory and against the principle of natural justice.

10. On 18.12.2019, notice of motion was issued and a reply dated 30.06.2021 has been submitted by Manjit Singh Sidhu, PPS, Superintendent, Central Jail Bathinda. As per para 4 of the said reply, the petitioner had committed a jail offence i.e. an FIR No.21 dated

21.12.2017 registered under Sections 327, 166, 34 and 120-B IPC and Sections 7, 8, 13(1)D, 13(2) PC Act at Police Station Vigilance Bureau, Bathinda was registered against him and therefore the petitioner is not entitled to the benefit of remission. Para 4 of the reply on merits is reproduced hereinbelow:-

“4.That in reply to the contents of Para No.2 it is submitted that the petitioner has undergone actual custody period of 12 years 04 months and 26 days. The petitioner has earned the remission of 05 year 04 months 05 days only, so the total custody period of petitioner including remission is 17 years 09 month and 01 days only (Custody Certificate Annexed as annexure R-1). According to the policy dated 08.07.1991 to be eligible for pre mature release the convict is required to undergo 10 years of actual sentence and including remission 14 years of sentence the petitioner has undergone the required sentence for consideration of his PRC case, but the section B(ii) of the policy clearly states that the premature release case of the convict will only be considered provided that the convict have not committed any jail offence for a period of 5 years prior to the date of eligibility. While the petitioner was undergoing sentence in Central Jail Bathinda FIR No.21, dated 21-12-2017, U/S 327/166/34/120-B IPC and 7, 8, 13(1)D, 13(2) PC Act. PS: Vigilance Bureau, Bathinda was register against the petitioner which is clearly a Jail offence, Now on bail in this case. The detention of the petitioner is in accordance to the law. A true typed copy of the Notification dated 08.07.1991 is annexed as Annexure R-2.”

11. It has also been mentioned that the legal notice served by the petitioner had been replied to vide letter No.16657 dated 05.12.2019 of the office of Superintendent, Central Jail, Ferozepur.

12. It was however, admitted that the actual custody period of the petitioner was 12 years, 04 months and 26 days and as per the Policy of his PRC (Premature Release Case), the petitioner had completed the required sentence for consideration for premature release but for the commission of the jail offence. Para 11 of the reply on merits is reproduced hereinbelow:-

“That the contents of the para no.11 of the petition are denied that the pre-mature release case of the petitioner has been denied under the policy for grant of remission code of criminal procedure and Articles 161 of constitution of India. Further the Actual custody period of the petitioner is 12 years 04 month and 26 days and as per the policy of his PRC case the petitioner has completed the required sentence for consideration. But the section B(ii) of the policy clearly states that the premature release case of the convict will only be considered provided that the convict have not committed any jail offence for a period of 5 years prior to the date of eligibility. While the Petitioner was undergoing sentence in Central Jail, Bathinda FIR No.21, Dated 17-12-2017, U/S 327/166/34/120 B IPC and 7, 8, 13(1)D, 13(2) PC Act. PS: Vigilance Bureau, Bathinda was register against the petitioner which is clearly a Jail offence. The detention of the petitioner is in accordance to the law. A true typed copy of the Notification dated 08-07-1991 is annexed as Annexure R-2.”

13. I have heard the learned counsel for both the parties.

14. As per the Punjab Government Instructions dated 08.07.1991, the petitioner would fall in category-C i.e. “a convict, who has been imprisoned for life for offences for which death is penalty but crimes are not considered heinous”. For such a convict, the actual imprisonment required is 10 years and with remission it is 14 years. In the case of the petitioner, he has undergone a total custody period of 12 years, 04 months and 26 days and with remission the period of custody would be 17 years, 09 months and 01 day (as on the date of the reply). Therefore, without doubt, the case of the petitioner is covered by the Notification dated 08.07.1991 (Annexure P-1).

The premature release has been denied to the petitioner on account of the provisions of the said Notification B(II). Clause B(II) of the said notification reads as under:-

“The cases of premature release will only be considered provided the convict has maintained good conduct in jail. For this purpose good conduct means that 'he' or 'she' has not committed any jail offence for a period of five years prior to the date of the eligibility for consideration for release as per para 1.1 above.”

15. The petitioner contends that various judgments of this Court have held that the commission of a jail offence is no legal ground to deny premature release to the convict. He refers to various judgments of this Court in “Kamal Kant Tiwari Versus State of Punjab, 2014(2) R.C.R. (Criminal) 940”, it was held as under:-

“11. Now, the question which arises is whether the petitioner is entitled for premature release under the State Government Police 1991?”

12. *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 exists on the date of consideration of his premature release. The reference in this regard can be made to the observations in State of Haryana V. Jagdish, 2010(2) R.C.R. (Criminal) 464: 2010(4) SCC 216. The matter as to whether the jail offence is a ground to deny the premature release to a life convict was considered in the case of Raj Kumar V. State of Punjab etc, (supra) wherein it was observed as follows:-*

“The counsel for the petitioner has relied on a judgment of this Court in the case of Subkash V. State of Haryana, 1994(3) Recent CR 489 to urge that commission of jail offences would be no legal or valid ground to deny the concession of premature release if it has become due, specially so when the convict had already been punished for the jail offences. While so holding, this Court in Subhash's case (Supra) has relied on the case of [Lila Singh v. State of Punjab](#), 1988 (1) RCR 28. It was held that jail offences committed by the convict for which he has already been punished, cannot be taken into consideration while deciding the case for premature release. Admittedly, the case of the petitioner for consideration on his premature release has been declined on the ground that the same can be considered only if the convict has maintained a good conduct in jail. As per the reply, 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. It is accordingly pleaded that the benefit of premature release cannot be granted to the petitioner as his case is not covered by the instructions, as aforementioned.

The stand of the State cannot be appreciated being contrary to the law laid down by this Court. The case of 3 of 4 the petitioner is fully covered by the judgment of this Court, referred to above. It has been clearly held by this Court that commission of a jail offence is no legal ground to deny the premature release, especially when the person has been punished for such a misconduct. Accordingly, the action of the respondents in not considering the case of the petitioner for premature release cannot be sustained. The petitioner is entitled to a consideration of his case for premature release in terms of the instructions, Annexure P-1."

13. In view of the above observations, the State Authorities are directed to consider the case of petitioner for his premature release without taking into consideration the jail offence committed by him and pass necessary orders within eight weeks of the receipt of this order, failing which the petitioner be released on parole on his furnishing personal bond and a surety bond to the satisfaction of District Magistrate, Sri Muktsar Sahib. The petitioner shall give an undertaking that he will not leave the country without prior permission of the Court and will keep peace and shall not indulge in any nefarious activity whilst on parole.

This Court in "Subhash Versus State of Haryana, 1994(3)

R.C.R. (Criminal) 489", held as under:-

"3. The case of the petitioner for premature release has been rejected on the ground that during confinement in jail, the petitioner has committed 19 jail offences in different jails for which he has been duly punished by the competent authority. Thus, according to the respondent, premature release case of the petitioner falls under para 2(a) of the latest

Government instructions dated 4.2.1993 and the petitioner will be eligible for his premature only after completion of 14 years' actual sentence including the under trial period and after earning 6 years' remissions.

4. It has been held that in Lila Singh V. State of Punjab, 1988(1) RCR 28 that reasoning given in the order declining premature release to the petitioner-convict that he had committed jail offences and his release will prove hazardous to peace and tranquillity in the locality are no legal reasons to decline premature release. The reasoning was on the basis that the convict has already undergone imprisonment for committing jail offences and there is no material to hold that his release is likely to prove hazardous to peace and tranquillity in the locality. Thus, it was held that the jail offences committed by the convict for which he has already been punished, cannot be taken into consideration while deciding the case of the petitioner for his premature release.

5. Mr. Deepak Sibal, Advocate, learned counsel appearing on behalf of the respondents, has not been able to cite any judgment taking view contrary to the aforesaid judgment.

6. Accordingly, this petition is allowed. In consequence thereof, the respondents are directed to reconsider the case of the petitioner for his premature release without taking into consideration the jail offences for which he has already been punished. This petition is disposed of.”

[emphasis supplied]

This Court in “Jangir Singh @ Jangiara Versus State of Haryana and others, CRWP-1280-2016, decided on 19.12.2016,” held as under:-

“Learned counsel for the petitioner has further argued that the co-accused against whom there were 44 cases (as against 14 cases against the petitioner) was given the benefit of premature release and no reason has been given why in the reply it has been accepted that the case of the petitioner has been considered under the policy of 2002. As regards the other co-accused it has been mentioned that he was convicted only in one minor jail offence which the petitioner had jumped parole.

Be that as it may, in this view of the matter I deem it appropriate to set aside the order and direct the case of the petitioner to be decided afresh by passing a speaking order.

In the meantime petitioner be released on interim bail to the satisfaction of CJM, Hisar.”

[Emphasis supplied]

This Court in “Brahma Nand Versus State of Haryana, 2015 (3) R.C.R. (Criminal) 836”, held as under:-

“6. Stand of the State Government is that the case of premature release of the petitioner was placed before the State Level Committee on 15.5.2014 and upon consideration, it was found that even though the petitioner has completed his requisite sentence in the light of premature release Policy dated 4.2.1993, yet keeping in view the jail offence committed by him i.e. having remained absent from parole for 4 years, 1 month and 13 days on two occasions, the State Level Committee did not recommend the premature release and rather recommended to defer the same for a period of one year and six months. Such recommendations of

the State Level Committee have been accepted while passing the impugned order dated 16.6.2014.

8. The issue as to whether jail offence is a ground to deny premature release to a life convict is no longer res-integra. This Court has considered precisely such issue in Raj Kumar V. State of Punjab (Criminal Misc. No.55534-M of 2006), decided on 12.12.2006 and held as follows:-

“The counsel for the petitioner has relied on a judgment of this Court in the case of Subhash V. State of Haryana, 1994(3) Recent CR 489 to urge that commission of jail offences would be no legal or valid ground to deny the concession of premature release if it has become due, specially so when the convict had already been punished for the jail offences. While so holding, this Court in Subhash's case (supra) has relied on the case of Lila Singh V. State of Punjab, 1988(1) RCR 28. It was held that jail offences committed by the convict for which he has already been punished, cannot be taken into consideration while deciding the case for premature release. Admittedly, the case of the petitioner for consideration on his premature release has been declined on the ground that the same can be considered only if the convict has maintained a good conduct in jail. As per the reply, 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. It is accordingly pleaded that the benefit of premature release cannot be granted to the petitioner as his case is not covered by the instructions, as aforementioned. The stand of the State cannot be appreciated being contrary to the law laid down by this Court. The case of the petitioner is fully covered by the judgment of this Court, referred to above. It has been clearly held by this Court that

commission of a jail offence is no legal ground to deny the premature release, especially when the person has been punished for such a misconduct. Accordingly, the action of the respondents in not considering the case of the petitioner for premature release cannot be sustained. The petitioner is entitled to a consideration of his case for premature release in terms of instructions, Annexure P1.”

9. Even otherwise, it has gone uncontroverted that with regard to having remained absent from parole, FIR No.456/98 under Sections 8/9 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, Police Station City Gurgaon was registered against the petitioner in which he was convicted and sentenced for one year rigorous imprisonment by the Court of Judicial Magistrate 1st Class, Gurgaon vide order dated 18.5.2007 and in appeal, the sentence was ordered to be undergone by the learned Sessions Judge, Gurgaon vide order dated 29.11.2010. As regards having remained absent from furlough from 29.3.2011 to 7.4.2011 i.e. eight days, a formal warning was awarded to the petitioner by the Superintendent of Prisons, District Prisons, Gurgaon on 9.4.2011.

10. In view of the circumstances noticed hereinabove and by applying the dictum laid down in Raj Kumar's case (supra), this Court is of the considered view that the impugned order dated 16.6.2014, Annexure P3, can not sustain. The same is, accordingly, set aside. State Authorities are directed to consider the case of the petitioner for his premature release strictly in terms of the premature Policy dated 4.2.1993 and without taking into consideration the jail offence committed by him, and pass orders afresh within a period of eight weeks from the receipt of a certified copy of this order .

[Emphasis supplied]

This Court in “Jatinder Kumar @ Bawa Versus State of Punjab & others”, CRM-M-30436-2011, decided on 16.02.2012, held as under:-

“In the reply filed, the State has not disputed that as on 15th June, 2011 the petitioner had undergone an actual sentence of 12 years, 1 month and 17 days and he has also earned remissions for more than 8 years. It is also stated that after the parole of 6 months and 9 days availed by the petitioner is deducted, he has completed 20 years of sentence including remissions. In the reply filed, however, the State has stated that the petitioner had killed a nine years old boy namely Harnam Singh and thus, the case of the petitioner falls under the category of heinous crimes. Furthermore, it is stated that the petitioner has committed jail offence on 23rd February, 2010 and a case FIR No.47 dated 23.02.2010 was registered at Police Station Division No.7, Ludhiana under Sections 43/66 of the Information and Technology Act, 2000. It is stated that by committing the jail offence, the petitioner has not maintained good conduct and as per the Punjab Jail Manual Para No.431.B.II, case of a convict for premature release is only to be considered provided the convict has maintained good conduct in the jail. It is stated that good conduct is to be construed in case the convict has not committed any jail offence for a period of five years prior to the date of his eligibility for consideration for premature release.

Counsel for the petitioner, to controvert this fact, has stated that in the FIR which was lodged under the Information and Technology Act, 2000 on 23rd February, 2010, the petitioner has already been granted bail and the trial is pending. Learned counsel has placed reliance upon ‘Raj Kumar v. State of Punjab

etc.’ (Criminal Misc. No.55534-M of 2006, decided on December 12, 2006), wherein it was held as under:

“The counsel for the petitioner has relied on a judgment of this Court in the case of Subhash v. State of Haryana, 1994(3) Recent CR 489 to urge that commission of jail offences would be no legal or valid ground to deny the concession of premature release if it has become due, specially so when the convict had already been punished for the jail offences. While so holding, this Court in Subhash's case (supra) has relied on the case of Lila Singh v. State of Punjab, 1988(1) RCR 28. It was held that jail offences committed by the convict for which he has already been punished, cannot be taken into consideration while deciding the case for premature release. Admittedly, the case of the petitioner for consideration on his premature release has been declined on the ground that the same can be considered only if the convict has maintained a good conduct in jail. As per the reply, 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. It is accordingly pleaded that the benefit of premature release cannot be granted to the petitioner as his case is not covered by the instructions, as afore-mentioned. The stand of the State cannot be appreciated being contrary to the law laid down by this Court. The case of the petitioner is fully covered by the judgment of this Court, referred to above. It has been clearly held by this Court that commission of a jail offence is no legal ground to deny the premature release, especially when the person has been punished for such a misconduct. Accordingly, the action of the

respondents in not considering the case of the petitioner for premature release cannot be sustained. The petitioner is entitled to a consideration of his case for premature release in terms of the instructions, Annexure P-1.”

Counsel for the State has failed to distinguish the above said judgment.

In view of the law laid down in Raj Kumar’s case (supra), the State authorities are directed to consider case of the petitioner for his premature release without taking into consideration the jail offence committed by him.

With the observations made above, present petition is disposed of.”

A similar view has been expressed by this Court in “Anil Kumar Versus State of Haryana & others, CRWP-33-2016, decided on 13.07.2016”.

16. A perusal of the various judgments of this Court would show that jail offences cannot be taken into consideration while deciding the case of the petitioner for premature release.

17. In view of the above observations, the State Authorities are directed to consider the case of the petitioner for his premature release without taking into consideration the jail offence committed by him and pass necessary orders within a period of eight weeks of the receipt of a copy of this order.

18. In view of the observations made above, the present petition is disposed of.

(JASJIT SINGH BEDI)
JUDGE

25.04.2022
JITESH

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