

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-2272-2019

Date of Decision:10.03.2022

Parmod Mandal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANT PARKASH

Present: Mr. Hoshiar Singh Jaswal, Advocate,
for the petitioner.

Mr. Amreek Singh Narwal, DAG, Haryana.

SANT PARKASH, J.

The petitioner has filed the present petition under Article 226/227 of the Constitution of India for issuance of writ in the nature of mandamus directing the respondents to release the petitioner prematurely in view of the Govt. Policy dated 13.08.2008 (Annexure P-2).

The petitioner along with co-accused was arrested in case FIR No.181 dated 31.08.2005 under Sections 365/302/201/392/34 of the Indian Penal Code, 1860 registered at Police Station Model Town, Rewari. The petitioner was convicted for the afore-mentioned offences by the Court of learned Additional Sessions Judge, Rewari vide judgment dated 16.03.2009 and he was sentenced to life imprisonment vide order dated 17.03.2009.

Aggrieved by the said judgment, the petitioner preferred an appeal bearing CRA-D-410-DB-2009 before this Court, which was dismissed on 20.04.2011.

The petition has been opposed by the respondents/State in

terms of reply filed by way of affidavit of Jai Kishan Chhillar, Superintendent District Jail, Gurugram.

Learned Counsel for the petitioner has contended that as per the policy of the Haryana Government dated 13.08.2008 (P-2), the petitioner is entitled for pre-mature release. He has further contended that the petitioner is in custody since 17.09.2005 and thus, the petitioner has already undergone more than 16 years of actual sentence. He has further submitted that there is no other case pending or decided against the petitioner. He has maintained good conduct inside the jail. Further detention of the petitioner is illegal and against the said Govt. policy and violation of Article 21 of the Constitution of India. Finally, learned Counsel for the petitioner has prayed that the present petition be accepted and the petitioner be set at liberty forthwith.

On the other hand, learned State Counsel has strongly opposed the present petition on the ground that the petitioner along with co-accused had committed a heinous crime. He next submitted that the date of conviction of the petitioner is 16.03.2009, therefore, the premature policy dated 13.08.2008 would be applicable in his case. As per the offence committed by the petitioner, his case falls within clause (a)(ii) of the policy dated 13.08.2008, which prescribes completion of 20 years of actual sentence and not less than 25 years with remissions.

This Court has heard the learned counsel for the parties and perused the case file.

It 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. 16.03.2009, the prevailing policy for pre-mature release of convicts was Premature Release Policy dated 13.08.2008.

The State government vide Notification dated 13.08.2008 (P-2) revised the policy regarding pre-mature release of life convicts. The relevant portion thereof reads as under:-

(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	Their cases for pre-mature release may be considered after completion of 20 years actual sentence and 25 years total sentence with remissions
(i)	xx xx xx	
(ii)	Murder with intention to collect ransom/Robbery/dacoity/kidnapping/ abduction	
(iii) to (xi)	x xx xx	xx xx xx
(b)	convicts who have been imprisoned for life having committed any crime which is defined in IPC and/or NDPS Act as punishable with death sentence	Their cases for pre-mature may be considered after completion of 14 years actual sentence including under trial period; provided that the total period of such sentence including remissions is not less than 20 years
(c)	xx xx xx	xx xx xx

From the perusal of the reply dated 21.01.2020, the petitioner has undergone 14 years, 04 months and 05 days of actual sentence and including remissions he has undergone more than 17 years. Though, as on today, i.e at the time of decision of the case, the petitioner has already undergone more than 16 years and 05 months of actual sentence and more than 19 years and 03 months with remissions, which could not be disputed by the State counsel.

Vide judgment dated 27.03.2008 passed by Co-ordinate Bench in CRM-M-30109-M-2002 (Mahender Singh and others Vs State of Haryana and others), this Court observed that the petitioners had 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.

In similar circumstances, this Court in judgment dated 01.02.2011 (**Jai Parkash Billu Vs State of Haryana and others**), the petitioner, who was convicted and sentenced in FIR registered under Sections 302/364/377/511 IPC has released the petitioner on completion of 14 years of actual sentence despite the requirement as per the prevalent policy that the petitioner had to undergo 20 years of total sentence including 06 years of remissions.

In the case in hand, the policy dated 13.08.2008 is applicable and as per clause (a)(ii) thereof, the petitioner had to undergo 20 years of actual sentence and 25 years of total sentence including remissions on account of the fact that offences alleged to have been committed by him are covered under the said clause. Such distinction made in the policy is totally arbitrary and has certainly caused hardship to the petitioner, who has undergone more than 16 years and 05 months and 14 days of actual sentence and more than 19 years and 03 months and 08 days with remissions. Thus, it can safely be held that as per the judgment passed in **Mahender Singh's**

case (supra), the offence committed by the petitioner does not fall under the heinous category for the reason that if a convict is involved in the murder of more than two persons, even then he is to be considered for pre-mature release and the case in hand the petitioner has been convicted for commission of offence of kidnapping with murder. Therefore, the petitioner in this case was required to be treated at par and he is held entitled to the same/similar treatment for the purpose of premature release. Consequently, the case of the petitioner is liable to be considered under clause (b) of the policy, which prescribes 14 years of actual sentence and 20 years of total sentence including remissions.

In the case in hand, the petitioner has already undergone more than 16 years and 05 months of actual sentence and 19 years and 03 months of total sentence including remissions, which could not be disputed by the learned counsel for the State. Since the total actual sentence undergone by the petitioner is only 09 months less than the sentence prescribed under the prevalent policy, the question has been dealt with by this Court in CRWP-2105-2019. The relevant part thereof reads as under:-

“In the case in hand, the policy dated 12.02.2002 is applicable and as per clause 2 (aa)(i) thereof, the petitioner had to undergo 20 years of actual sentence and 25 years of total sentence including remissions on account of the fact that offences alleged to have been committed by him are covered under the said clause. Such distinction made in the policy is totally arbitrary and has certainly caused hardship to the petitioner, who has undergone more than 19 years, 02 months and 13 days of actual sentence and more than 25 years with remissions. Otherwise also, the total actual sentence

undergone by the petitioner is only 10 months less than the sentence prescribed under policy dated 12.02.2022, even if the said policy is made applicable”.

Thus, 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. Further, as per Clauses 7(a) & (b) of the said policy, 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 punished for any jail offence during the last five years.

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.

10.03.2022
mks

(SANT PARKASH)
JUDGE

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