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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-1639-2023

Date of Decision: April 12, 2023

Rakka

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

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Present:- Mr. Akshay Rana, Advocate for the petitioner.
Mr. V.K. Gupta, AAG, Punjab.

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HARKESH MANUJA, J. (ORAL)

Reply by way of affidavit of Ramandeep Singh Bhangu, PPS, Superintendent New District Jail, Nabha, on behalf of respondents No.2 & 3 filed in Court today is taken on record. Copy given. Registry to tag the same at appropriate place.

By way of present criminal writ petition invoking Article 226 of the Constitution of India, a prayer has been made for quashing of impugned order dated 19.12.2022/ 17.01.2023 (P-2); whereby the claim of the petitioner for grant of premature release, in view of policy dated 08.07.1991, stands rejected.

Having been implicated in FIR No.212 dated 30.05.2003 under Sections 302/460/411/148 read with Section 149 IPC, registered at Police Station Samana, District Patiala, the petitioner was convicted vide judgment dated 12.09.2009 passed by learned Additional Sessions Judge, Patiala and was awarded life sentence.

It has been submitted on behalf of the petitioner that he is behind the bars since the date of incident and has not even availed any parole or furlong during this period. Learned counsel further submits that on completion of life imprisonment for 14 years, case of the petitioner was

initiated for his premature release and sent to competent authorities relying upon policy dated 08.07.1991 issued by the State of Punjab, however, the same was rejected vide order dated 19.12.2022/ 17.01.2023 (P-2). The operative part of the same is reproduced hereunder for reference:-

“5. The premature release case of the life convict Rakka son of Sajjan Singh, New district Jail, Nabha involved in FIR No. 212 dated 30.05.2003, was presented before the Hon’ble Governor, Punjab under Article 161 of the Constitution of India after stating complete details of the above facts. The competent authority Hon’ble Governor, Punjab, received file along with complete record and reports of District Magistrate, Gunna and Police authority reports/ Addl. Director General of Police (Prisons) non-recommendation reports regarding premature release and objections raised by the state level committee constituted by the government and after considering all facts of the case the premature release case of Rakka son of Sajjan Singh, New District Jail, Nabha is hereby rejected under Article 161 of the Constitution of India.”

Relying upon the decision made by this Court in **CRWP-394-2021, titled as Bhim Singh Vs. State of Punjab and others**, decided on 21.02.2022, learned counsel for the petitioner vehemently submits that the impugned order passed by respondents is in violation of the law laid down by this Court as the same has been passed simplicitor on the basis of report submitted by the District Magistrate, Guna; whereas while dealing with the case of premature release, the competent authority is required to come to its own conclusion upon application of mind to the facts of each case. In this regard, learned counsel refers to para 11 of **Bhim Singh’s** case (supra) and for convenience, the same is reproduced hereunder:-

“(11) A perusal of the order shows that the respondent Authority has nowhere recorded its satisfaction and has merely made a reference to the report of the SSP which is not substantiated and is a mechanical expression of an apprehension. The competent authority has to come to its own conclusion after application of mind to the facts placed before it. No such decision making is however, reflected in the order. There is no basis recorded in the report forwarded by SSP Shahjahanpur (Uttar Pradesh) as well as the District Magistrate, Shahjahanpur (Uttar Pradesh) as to what are the prevailing circumstances or reasons leading to the concerned authority to form such an opinion. Any such recommendation should ordinarily be based upon some tangible or objective material and should not be mere conjectural for subjective mechanical assessment. Further, an opinion expressed by an authority does not automatically become satisfaction of the State Government.”

On the other hand, learned State counsel submits that the case of the petitioner has been rejected on the basis of report submitted by District Magistrate, Guna, which contained an opinion of Superintendent of Police, Guna opposing the recommendations for premature release of the petitioner. He further submits that there are two other cases pending against the petitioner, though undisputedly, the petitioner has already undergone the sentence in the said two cases.

I have heard learned counsel for the parties and gone through the records as well as law cited at the Bar which has even been annexed with the present petition. I find substance in the submissions made on behalf of the petitioner.

A perusal of the impugned order shows that the competent authority while rejecting the prayer made by the petitioner has simplicitor relied upon the report submitted by the District Magistrate, Guna as well as the opinion of the police authorities and there has been no independent application of mind to the facts of the present case which clearly falls short of the parameters laid down by this Court in **Bhim Singh’s** case (supra).

In view of the aforesaid, the present petition is allowed. Impugned order dated 19.12.2022/ 17.01.2023 (P-2) passed by the competent authority is hereby set aside with a direction to reconsider the claim of the petitioner as regards his premature release by applying independent mind in the facts and circumstances of the present case, giving reasons in support thereof, order within a period of six weeks after the receipt of certified copy of this order.

However, it is directed that in case the Government is unable to decide the case of the petitioner within a period of six weeks, the petitioner shall be released on interim parole/ interim bail to the satisfaction of CJM/ Duty Magistrate, concerned, till the time his case is decided on merits.

April 12, 2023
sanjay

(HARKESH MANUJA)
JUDGE

<i>Whether speaking/reasoned</i>	Yes/No
<i>Whether Reportable</i>	Yes/No