

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP No.2663 of 2022 (O&M)
Date of Decision : 31.10.2023

Jaswinder Singh Dosanjh Petitioner
versus

State of Punjab & ors. Respondents

CRWP No.218 of 2023 (O&M)

Gurmej Singh Petitioner
versus

Union of India & ors. Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. S.S.Salar, Advocate
for the petitioner (CRWP No.2663 of 2022).

Mr. Arvind Kumar Sharma, Advocate for
Mr. S.S.Rana, Advocate
for the petitioner (CRWP No.218 of 2023).

Mr. Kunwar Bir Singh, AAG, Punjab.

Mr. Dheeraj Jain, Sr. Panel Counsel, UOI with
Mr. Sahil Garg, Advocate
for respondent No.4 (CRWP No.2663 of 2022) and
for respondents No.1 & 2 (CRWP No.218 of 2023).

PANKAJ JAIN, J. (ORAL)

- 1 This order shall dispose off above mentioned two petitions.
- 2 CRWP No.2663 of 2022 has been filed under Article 226/227
of the Constitution of India for quashing the order dated 10.02.2022
(Annexure P-6) passed by respondent No.2 whereby the application for

premature release of the petitioner has been rejected.

3 CRWP No.218 of 2023 has been filed under Article 226 of the Constitution of India for issuance of direction to the respondents to consider the case of the petitioner for grant of premature release as per the Govt. Policy (Annexure P-5) dated 08.07.1991 and Sections 432/433/433-A Cr.P.C. read with Article 161/72 of the Constitution of India read with Section 13(6) of the Repatriation of Prisoners Act, 2003 read with Articles 7, 8 & 10 of Indo-UK TSP (Transfer to Sentenced Prisoners) Agreement and further for setting aside the impugned order Annexure P-6 dated 20.06.2018.

4 For the sake of convenience facts are being taken from CRWP No.2663 of 2022. Both these petitions are decided by common order as the issues involved therein are similar.

5 The petitioner namely Jaswinder Singh Dosanjh was convicted by the Central Criminal Court, Old Bailey, London in a case titled as Regina Vs. Jaswinder Singh Dosanjh. The petitioner was sentenced to life imprisonment with further condition that the petitioner shall not be released unless minimum 24 years of sentence is served. The petitioner preferred appeal before Supreme Court of Judicature, Court of Appeal (Criminal Division) London which was dismissed however with a modification of the sentence order. The condition of undergoing minimum 24 years of imprisonment was reduced to 21 years. Under the agreement between Government of India and the Government of United Kingdom and Northern Ireland dated 18.02.2005, the petitioner stands repatriated to his Country i.e. India and is serving sentence.

6 After serving 14 years of actual sentence, the petitioner preferred an

application seeking his premature released. After application filed by the petitioner dated 17.07.2020 was not decided, so he preferred CRWP No.8059 of 2020 which was disposed off vide order dated 09.11.2021 with a direction that the application preferred by the petitioner be decided within a period of 3 months in accordance with the rules and policies applicable.

7 In compliance of the aforesaid direction order dated 10.02.2022 has been passed by respondent No.2-Additional Director General of Police (Jails), Punjab rejecting the application filed by the petitioner.

8 While attacking the impugned order learned counsel for the petitioner submits that the petitioner is entitled to be released prematurely on completion of 14 years of actual sentence as the premature release of the petitioner has to be governed by the policies applicable in terms of Indian laws. It is being claimed that the petitioner has a young wife and child and his prayer for premature release needs to be considered sympathetically. Reliance is being placed upon *State of Haryana & ors. Vs. Jagdish (2010) 4 SCC, 2016, Harpreet Singh Vs. State of Punjab & ors., Criminal Appeal No.2084 of 2023 (Arising out of SLP (Crl.) No.7719 of 2023 decided on 24.07.2023, Sukhvinder Kaur Vs. State (Govt. of NCT of Delhi) & ors. passed in W.P.(CRL) 1070 of 2020 decided on 14.10.2020, Azad Singh Vs. The State of Punjab & ors., passed in CRWP No.8025 of 2021 decided on 11.04.2023, State of Haryana Vs. Mahender Singh (2007) 4 RCR (Criminal) 909 and The State of Haryana Vs. Raj Kumar (2021) 3 RCR (Criminal) 724.*

9 Per contra learned counsel for the respondents have argued that it is a matter of record that the petitioner is required to serve minimum

sentence of 21 years as per the judgment of conviction and thus the claim of the petitioner for premature release cannot be considered prior thereto.

10 Having heard rival contentions and after perusing the records of the case, this Court finds that there can't be dispute with respect to the proposition that the case of the petitioner for premature release would be governed by the policy decision taken by the Government of India with respect to convicts but in terms of bilateral agreement entered into between the Government of India and Government of United Kingdom and Northern Ireland. Supreme Court also in the case of *Harpreet Singh's case supra* has reiterated that power vests in Union of India even to grant pardon, amnesty or commutation of sentence in accordance with the laws prevailing in India. The relevant provisions of agreement between Government of the United Kingdom of Great Britain & Northern Ireland and the Government of the Republic of India on the transfer of sentenced persons placed on record as Annexure P-3, read as under :-

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India, hereinafter referred to as the Contracting States;

Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and

Considering that this objective should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society;

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement:

(a) "judgment" means a decision or order of a court or tribunal imposing

a sentence:
(b) "receiving State" means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence;
"sentence" means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment, in the exercise of its criminal jurisdiction;
(d) "sentenced person" means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in the Contracting States;
(e) "transferring State" means the State in which the sentence was imposed on the person who may be, or has been transferred.

ARTICLE 7

Effect of transfer for the receiving State

- 1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement.*
- 2. Subject to the provisions of Article 10 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.*

ARTICLE 10

Pardon, amnesty or commutation, and Review of Judgment

- 1. The transferring State alone shall decide on any application for the review of the judgment.*
- 2. Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws.*

11 Learned counsel for the petitioner relies upon Article 7 to submit that the sentence shall be governed by law of receiving State and that State alone shall be competent to take all appropriate decisions. In the present case, the receiving State is India. The transferring State is England. However, Article 7 is subject to provisions of Article 10. So far as the enforcement of sentence is concerned the same shall definitely be governed by law of receiving State but it is only the transferring State alone i.e. England which shall decide on any application for the review of the

judgment. The judgments provide minimum sentence to be served by the petitioner(s) in both cases even though the petitioners have been convicted for life, the application for premature release of the petitioner(s) cannot be decided taking a view which militates against the mandate of order of sentence. Any such view by the authorities or by this Court shall be an effort to tinker with the judgment/order of sentence which shall amount to reviewing the same. The same shall be in teeth of Article 10. The petitioners can seek premature release in India only on completion of minimum sentence awarded as per judgment of the Courts in England in their respective cases.

- 12In view of above, present petitions are dismissed.
- 13Photocopy of this order be placed on the connected file.
- 14Pending miscellaneous application, if any, shall also stand disposed off.

31.10.2023
Pooja sharma-I

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable :

Yes
No