

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRWP-4366-2022
Reserved on: 12.12.2023
Pronounced on: 19.12.2023
2023:PHHC:163124

SHIV KUMAR

. . . . Petitioner

Vs.

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Rahul Deswal, Advocate, for
Mr. R.S. Dhull, Advocate, for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 226/227 of the Constitution of India for setting aside the impugned order dated 19.10.2021 (Annexure P-1), whereby premature release case of the petitioner has been rejected by the respondents - State Level Committee. Petitioner further prays for issuing a writ in the nature of mandamus to direct the respondents to grant premature release to him on usual terms and conditions on the basis of Clause (b) of the Policy dated 13.08.2008 (Annexure P2) of the Haryana Government.

2. It is undisputed that petitioner Shiv Kumar along with one Deepak son of Swaran were convicted by the Court of Ld. Additional Sessions Judge, Jhajjar, under Section 302 IPC vide judgment dated 23.10.2010 (Annexure P3) in a case arising out of FIR No.76 dated 14.08.2005, registered at Police Station Salhawas, under Sections 302/120B/34 IPC. Vide order dated 29.10.2010, both of them were sentenced

to undergo life imprisonment for committing the said offence under Section 302 IPC and to pay fine of ₹50,000/- each with default sentence of one year. Criminal Appeal bearing CRA-D-1123-DB-2010 filed by the petitioner, has since been dismissed by this Court on 23.03.2013.

3.1 The contention of the petitioner is that as per the policy dated 13.08.2008 (Annexure P2), issued by the Government of Haryana, under Article 72/161 of the Constitution of India, which is applicable to this case, he is required to undergo actual sentence of 14 years and total sentence by including the remission period as 20 years. Though, petitioner has already undergone more than 16 years actual sentence and more than 20 years of total sentence by including remission, but his case for premature release has been declined on the ground that petitioner had committed double murder of his brother and *Bhabhi* (sister-in-law) on account of a property dispute, which showed exhibition of brutality to the society.

3.2 Ld. Counsel for the petitioner contends that as per the policy dated 13.08.2008, there is already a specific/separate provision for convicts, who have committed any heinous crime, as per Clause (a) of the Policy, but even the State Level Committee agreed that act of the petitioner does not fall under the category of heinous crime and so, case of the petitioner was liable to be considered under Clause (b) of the Policy.

3.3 It is further contended by ld. counsel that co-convict Deepak s/o Swaran, has already been prematurely released vide order dated 10.3.2022 (Annexure P4), after serving his sentence to the similar length as of the petitioner, and thus, petitioner has been discriminated. Petitioner seeks parity with the said co-convict- Deepak. The impugned order dated 19.10.2021, passed by the State Legal Committee, is alleged by the petitioner to be illegal,

arbitrary and discriminatory besides being against the principles of natural justice.

4. As per the reply filed by way of affidavit of Shri Jagjit Singh, Inspector General of Prisons, Haryana, on behalf of all the respondents, petitioner alongwith his parents, wife and one of his friends Deepak, had committed the double murder of his brother and *Bhabhi* by giving farsa blows on a dispute relating to partition of the family property. Though his parents and wife were acquitted by the trial Court by giving them the benefit of doubt, but petitioner and co-accused Deepak were convicted and sentenced to life imprisonment. The injuries as found on the person of deceased Ved Parkash and Savita, reflected in the postmortem report, are also disclosed in the reply and it is submitted that co-convict Deepak was allowed the benefit of premature release, since he was only the friend of the petitioner and had helped him to commit the crime, whereas petitioner committed murder of his real brother and *Bhabhi* and so, petitioner cannot claim parity with the co-convict. It is further submitted that petitioner cannot claim premature release as a matter of right, unless State Government commutes the sentence of a life convict through a written order. The State Government in its policy, considered the case of the petitioner and found the petitioner to be unfit for giving the benefit of premature release. The case of the petitioner was duly considered by the State Level Committee and having regard to the brutal manner in which the double murder was committed by the petitioner, the case of the petitioner for premature released was deferred for three years by the government, as per the order dated 19.10.2021. With these submissions, prayer has been made for dismissal of the petition.

5. I have considered submissions of both the sides and have perused the record.

6. It is not in dispute that petitioner has been sentenced to undergo imprisonment for life vide judgment & order dated 23.10.2010/29.10.2010 in case arising out of FIR No.76 dated 14.08.2005 registered at Police Station Salhawas, under Sections 302/120B/34 of IPC, and that this judgment has attained finality. It is also not in dispute that along with the petitioner, Deepak son of Swaran was also convicted for the same offence and was sentenced for the similar punishment.

7. The Government of Haryana, the Jails and Judicial Department, vide notification dated 13.08.2008 (Annexure P2) issued a policy for the premature release of the life convicts, in exercise of its powers conferred by Sub Section (1) of Section 432 read with Section 433 of the CrPC and in supersession of its earlier policies. The relevant Clause (a) and (b) of the said policy, read as under: -

<i>(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-</i> <i>(i) murder with rape/unnatural offences;</i> <i>(ii) murder with intention to collect ransom/ robbery /dacoity/kidnapping/abduction;</i> <i>(iii) murder of more than two persons;</i> <i>(iv) persons convicted for second time for murder.</i> <i>(v) sedition</i> <i>(vi) sedition with murder.</i> <i>(vii) murder while undergoing life sentence: (viii) murder with offence under TADA Act, 1987,</i> <i>(ix) murder of a child under the age of 14 years.</i> <i>(x) convicts who cannot for some definite reasons be prematurely released without danger to public order and safety;</i> <i>(xi) any other crime that the State Level Committee considers to be "heinous for reasons to be recorded in writing</i>	<i>Their cases for pre-mature release may be considered after completion of 20 years actual sentence and 25 years total sentence with remissions.</i>
<i>(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.</i>	<i>The cases for pre-mature release may be considered after completion of 14 years actual sentence including undertrial period; provided that the</i>

	<i>total period of such sentence including, remissions is not less than 20 years</i>
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8. Apart from above, Clause 4 provides that all premature release cases under the Policy are subject to Section 433-A CrPC. Besides in Clause 8, it is reiterated that no convict has fundamental right to remission of shortening of sentence and that the State Government in exercise of its executive/ discretionary power of remission is to consider each individual case keeping in view all the relevant factors. It is further provided that policies issued in exercise of power of the State in such as way that **no discrimination is made while considering the case of life convicts for premature release.**

9. As is evident from Clause (a) & (b) of the policy, as reproduced above, crimes falling in the heinous category have been separated and put in Clause (a) of the Policy and for such crimes falling in the heinous category, the premature release case is to be considered after completion of 20 years of actual sentence and 25 years of total sentence with remissions. On the other hand, for convicts who have been imprisoned for life, having committed any crime as defined in IPC or in NDPS as punishable with death sentence, their cases for premature release are to be considered on completion on 14 years of actual sentence including under trial period, provided that the total period of such sentence including remission is not less than 20 years.

10. Since Clause (a) of the Policy specifically provides about heinous crimes, therefore, it can be inferred that crimes falling in clause (b) of the Policy are not treated to be falling in the heinous category. Further, no distinction has been made for the convicts, who fall in Clause (b) of the Policy, on the basis of their attribution in the crime, for which they have been convicted. It will be absolutely arbitrary and discriminatory to chart out a

separate category for those convicts, who are convicted for committing murder of their near relatives; or for those convicts, who are not related to the deceased, despite the fact that both the convicts fall in the same category i.e., Clause (b) of the Policy.

11. In the present case, it is not disputed by the respondent that case of the petitioner falls in Clause (b). As per the reply filed by way of affidavit dated 2.9.2022 of Shri Jagjit Singh, Inspector General Of prisons, Haryana, period of sentence undergone by the petitioner is as under: -

	<i>Years</i>	<i>Months</i>	<i>Days</i>
<i>Actual Sentence</i>	<i>16</i>	<i>11</i>	<i>22</i>
<i>Total sentence by including remission</i>	<i>21</i>	<i>03</i>	<i>12</i>

From the date of this affidavit, more than 1 year and 3 months have elapsed and thus, the actual sentence undergone by the petitioner is now more than 18 years 2 months; and total sentence by including remission is more than 22 years and 6 months.

12. No doubt that a convict has no fundamental right of seeking remission or shortening of sentence as a matter of right and the Government has discretionary power of remission to consider each individual case by keeping in view the relevant factors, but said discretion is to be exercised in a fair and non-discriminatory manner. Once a particular category of convicts have been placed in one category, they cannot be discriminated against themselves.

13. In the present case, though premature release of co-convict has been allowed after completion of 14 years of actual sentence and 20 years of sentence by including remission as is evident from Annexure P-4, but the case of petitioner has been deferred for another period of 3 years by making a distinction that he had committed the murder of his brother and *Bhabhi* over a

property dispute. Such a discriminatory attitude on the part of the Government is not permissible.

14. In ***Rashidul Jafar @ Chota Vs. State of Uttar Pradesh and another*** [Writ Petition (Criminal) No.336 of 2019] decided on 06.09.2022, it has been held by Hon'ble Supreme Court as under: -

“The implementation of the policy for premature release has to be carried out in an objective and transparent manner as otherwise it would impinge on the constitutional guarantees under Articles 14 and 21. Many of these life convicts who have suffered long years of incarceration have few or no resources. Lack of literacy, education and social support structures impede their right to access legal remedies. Once the state has formulated its policy defining the terms for premature release, due consideration in terms of the policy must be given to all eligible convicts. The constitutional guarantees against arbitrary treatment and of the right to secure life and personal liberty must not be foreclosed by an unfair process of considering applications for premature release in terms of the policy.”

15. In ***Rajkumar Vs. The State of Uttar Pradesh*** [Writ Petition (Criminal) No.36 of 2022], decided on 06.02.2023, it has been observed by Hon'ble Supreme Court as under: -

“The State having formulated Rules and a Standing Policy for deciding cases of premature release, it is bound by its own formulations of law. Since there are legal provisions which hold the field, it is not open to the State to adopt an arbitrary yardstick for picking up cases for premature release. It must strictly abide by the terms of its policies bearing in mind the fundamental principle of law that each case for premature release has to be decided on the basis of the legal position as it stands on the date of the conviction subject to a more beneficial regime being provided in terms of a subsequent policy determination. The provisions of the law must be applied equally to all persons. Moreover, those provisions have to be applied efficiently and transparently so as to obviate the grievance that the policy is being applied unevenly to similarly circumstanced persons. An arbitrary method adopted by the State is liable to grave abuse and is liable to lead to a

situation where persons lacking resources, education and awareness suffer the most.”

CONCLUSION:

16. Consequent to the entire discussion of the factual matrix and legal position as above and taking into account the fact that petitioner has already undergone much more than the actual sentence as well as the total sentence by including remission period, as minimum required under the 2008 policy, impugned order dated 19.10.2021 (Annexure P1) cannot be sustained and as such, the same is hereby set aside. The present petition is allowed. The respondent- authorities are hereby directed to consider the premature release case of the petitioner in light of its policy dated 13.08.2008 (Annexure P2) and also the observations made in this order. It is further directed that till the decision is taken by the competent authority regarding premature release of the petitioner as per this order, he be released on interim bail on furnishing requisite bonds to the satisfaction of the Id. CJM concerned.

(DEEPAK GUPTA)
JUDGE

19.12.2023

Vivek

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| 1. Whether speaking/reasoned? | Yes |
| 2. Whether reportable? | No |