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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-4473-2022 (O&M)
Date of decision: 12.09.2023

Jarnail Singh ...Petitioner
Vs.
State of Punjab and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rajpreet Singh Brar, Advocate,
For the petitioner.

Mr. Mohit Thakur, AAG, Punjab.

ARUN MONGA, J. (ORAL)

Petitioner herein is a life convict. He, *inter alia*, seeks issuance of directions to the respondents to initiate and consider the premature release case of the petitioner, as he has undergone more sentence than that required for consideration of premature release case.

2. Learned counsel for the petitioner submits that petitioner was arrested in case FIR No.90 dated 11.07.2007 under Sections 302, 307, 326, 325, 324, 323, 148 read with Section 149 of IPC and Sections 27 of Arms Act, at Police Station, Rajasansi, District Amritsar. Petitioner was convicted and sentenced to undergo life imprisonment vide order dated 30.11.2012 passed by learned Sessions Judge, Amritsar. Petitioner filed a criminal appeal bearing CRA-D-1201-DB-2012 against order of conviction, which was dismissed by this Court vide order dated 31.08.2018.

3. He further submits that petitioner has already undergone more than 10 years actual sentence of imprisonment and with remission more than 16 years sentence. The conduct of the petitioner remained good during incarceration as well as outside the jail. While on parole, he never committed any offence.

4. He further urges that petitioner requested jail authorities for initiating the premature release of the petitioner as the petitioner has already undergone the required sentence, but his premature release case was not initiated by jail authorities. Petitioner sent a legal notice dated 19.03.2022

(Annexure P-2) to Jail Authorities through his counsel. Respondents sent reply to the legal notice by saying that prisoner was convicted on 30.11.2012. Under the Government Policy dated 08.08.2011 (Annexure P-1), the convict has to undergo actual imprisonment 10/14 years, so as to consider the premature release of the convict.

5. Learned counsel for petitioner would further urge that jail authorities are not counting his parole period i.e. 03 years 03 months and 23 days. In this regard, he relies on judgment/order passed by this Court in case titled '*Faquir Singh Vs. State of Punjab and another decided on 18.08.1987.*¹', relevant extract whereof is reproduced hereinbelow:

"2. The contention on behalf of the petitioner is that in calculating the actual period of imprisonment undergone by him the time spent by him on parole has wrongly not been included. To this the reply on behalf of the State Government is that the period spent of parole cannot be considered to be a part of actual imprisonment. Thus, the vital point for consideration in this case is whether the time spent by a prisoner on parole is or is not to be included in the period of undergone actual imprisonment.

*3. Light on this subject is thrown by the Supreme Court in Maru Ram v. Union of India, AIR 1980 Supreme Court 2147. In para 71 of this judgment it is observed that the expression "period" and "imprisonment" must receive a wider connotation. Any life under the control of the State, whether within the high walled world or not, may be a prison if the law regards it as such. Palaces, whether Gandhiji was detained, were prisons. Restraint on freedom under the prison law is the test. Licensed release where instant recapture is sanctioned by the law, and, likewise, parole, where the parolee is no free agent, and other categories under the invisible fetters of the prison law legitimately be regarded as imprisonment. **Thus, the view taken by the Supreme Court is that the time spent on parole is part of imprisonment because it is a licensed release and the prisoner released on parole is not a free agent. (emphasis supplied)***

XXX XXX

*5. I am, therefore, of the view that the time spent on parole by a prisoner can legitimately be included in the period of imprisonment undergone by him and as such it has to be so considered while deciding his premature release case. It is, however, clarified that in view of Section 3(3) of the Punjab Good Conduct Prisoners (Temporary Release) Act the period spent by the petitioner on parole shall not be counted toward the total period of sentence of imprisonment. **Taking this view the respondent State of Punjab is directed to consider the premature release case of the petitioner within three months from today, provided the petitioner has undergone actual imprisonment of***

8½ years inclusive of the time spent on parole and total of 14 years imprisonment including remissions but excluding the period of parole. This petition is disposed of in these terms.”(emphasis supplied)

6. On the other hand, learned State counsel strenuously opposes the present petition. He submits that case of the petitioner for pre-mature release will be considered after undergoing 10 years actual sentence and 14 years with remission as per Premature Release Policy dated 08.08.2011 (Annexure P-1). He submits that now petitioner is on parole and before that petitioner was confined and was working in Open Air Jail Nabha. As per policy, a prisoner, who is kept and worked 01 year in the Open Air Jail, Nabha, is entitled to get one year extra remission. So, the petitioner is required to undergo 09 years actual or 14 years with remission under the said policy. The petitioner’s actual undergone period is 07 years 03 months and 22 days as on 25.07.2023.

7. Learned counsel for the petitioner submits that post conviction detention period of the petitioner is 10 years 07 months and 15 days as on 25.07.2023, per custody certificate. His parole period is 03 years 03 months and 23 days, respondents are not counting his parole period. Including remission, his total served sentence is 15 years 03 months and 22 days as on 25.07.2023, per custody certificate.

8. Arguments heard.

9. No new arguments have been raised by learned State counsel other than reiteration of averments contained in reply.

10. I am in respectful agreement with the view taken by my learned predecessor in the judgment, *ibid*.

11. In the premise, instant petition is disposed of with a direction to the competent authority/official respondents to pass fresh orders by taking into consideration the judgment, dated 18.08.1987, *ibid* passed by this Court. Needful be done within a period of 2 months from today.

12. Disposed of accordingly.

13. Pending application, if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

12.09.2023

Vandana

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No