

2023:PHHC:074741

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-356-2017 (O&M)

Date of Decision:- 24.5.2023

Jangir Singh @ Jangira

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. P.R. Yadav, Advocate for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

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GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 10.3.2017 (Annexure P-8) whereby the case of the petitioner for his pre-mature release has been declined. The petitioner stands convicted for offence under Section 302 read with Section 34 IPC in a case arising out of FIR No. 166 dated 2.4.1992, Police Station City Hisar by the learned Sessions Judge, Hisar.
2. The allegations against the petitioner, as per FIR, in nutshell, are that the petitioner alongwith co-accused had murdered Mundi in a brutal manner by inflicting 17 injuries including penetrating injuries with the help of sword and knife. The petitioner was armed with a sword. Vide judgment dated 24.12.2002, passed by Sessions Judge Hisar, the petitioner was held guilty of having committed murder and was sentenced to undergo imprisonment for life. The petitioner challenged the said judgment by way of filing an

appeal in this Court but the same stands dismissed vide judgment dated 6.4.2006. The case of the petitioner was considered for his pre-mature release but has been declined vide impugned order dated 10.3.2017 (Annexure P-8).

3. It is the case of the petitioner that as on the date of the conviction of the petitioner i.e. 23.12.2002, it was policy dated 12.4.2002 (Annexure P-3), issued by Government of Haryana, which was in force and that his case would fall in para 2(b) of said policy, as per which he was required to have undergone an actual sentence of 10 years and 14 years including remissions to be entitled for pre-mature release. The petitioner claims that since he had undergone actual sentence of more than 12 years and a total of about 15 years including remissions, he is entitled to to be released, being covered under said policy.
4. The case of the petitioner was considered for his premature release by the authorities but was declined vide order dated 10.3.2017 (Annexure P-8) while observing that the petitioner is a hardened criminal having been involved in 13 serious offences of robbery and that he had also absconded while availing parole for a long period of 5 years and 1 month. While declining the case of the petitioner for premature release, it was observed that his case falls within parameters para 2(a)(xii)&(xiv) of policy dated 12.4.2002 (Annexure P-3) and is entitled to be considered only after he completes an actual sentence of 14 years and 20 years of total sentence including remissions.
5. The learned counsel for the petitioner vehemently argued that the case of the petitioner ought to have been considered under para 2(b) of policy dated

12.4.2002 and not under para 2(a)(xii)&(xiv) as the petitioner cannot be termed as 'hardened criminal', particularly when he has already undergone sentence in respect of other offences. The learned counsel pressed into service judgments of Hon'ble Supreme Court in Rajan Versus The Home Secretary, Home Department of Tamil Nadu and Ors. 2019(2) RCR (Criminal) 923 and State of Tamil Nadu and others versus P. Veera Bhaarthi 2019(2) RCR (Criminal) 118 to contend that since the petitioner has already undergone sentence as awarded to him in respect of other offences/cases, the factum of his such convictions cannot be taken into account for the purpose of declining his case for premature release.

6. It is further the case of the petitioner that since an identically situated co-accused namely Inder has already been ordered to be prematurely released vide order dated 8.6.2009 (Annexure P-9), a similar concession of premature release could not be denied to the petitioner.
7. On the other hand, the learned State counsel, while opposing the petition has submitted that the petitioner has a chequered record having been involved in as many as 13 other cases. It has further been submitted that the petitioner had also over-stayed when he was granted parole and remained absconding for a good more than 5 years and that as such, the petitioner being a seasoned and hardened criminal does not deserve to be released prematurely. The learned State counsel further submitted that the manner in which the deceased had been killed by inflicting a large number of injuries merely on the suspicion that deceased was a police informer shows that the petitioner can kill anyone at the drop of hat. It has, thus, been submitted that the impugned order dated 13.6.2016 (Annexure P-4) does not suffer from any

infirmity and had been passed after taking into account all the necessary considerations particularly the antecedents of the petitioner.

8. This Court has considered rival submissions addressed before this Court. The contentious issues arising out of rival submissions may broadly be stated as under :

- (i) Whether the case of the petitioner would fall under Para 2(b) of policy dated 12.4.2002 (Annexure P-3) or under paras 2(a)(xii) and 2(a)(xiv) of said policy ?
- (ii) Whether, on account of the petitioner already having undergone term sentences imposed on him in respect of other offences committed by him in the same case or in other cases, such other offences are not to be taken into account for the purpose of assessing his antecedents while considering his entitlement for premature release?
- (iii) Whether, the petitioner is entitled to be prematurely released on grounds of parity as identically situated co-accused Inder had already been ordered to be released prematurely ?

9. Each of the above framed question is being discussed individually herein under:

10. **Question no (i) :**

- (i) Whether the case of the petitioner would fall under Para 2(b) of policy dated 12.4.2002 (Annexure P-3) or under paras 2(a)(xii) and 2(a)(xiv) of said policy ?

Since, it is the sentence undergone by a convict which has to be measured against the parameters prescribed for various categories of convicts, in the policy applicable to a convict for his premature release, it is apposite to take stock of the custody period of the petitioner. The details of sentence already

undergone by the petitioner is stated in Para 16 of the amended reply dated 14.1.2020, as follows :-

“16. That the detail of the sentence undergone by the petitioner **(on interim bail since 22.12.2016)** as on 22.12.2016 is as under:

Sr. No.	Particulars	Period	Years	Months	Days
1.	Undertrial Period	From 06.04.1992 to 01.03.1993, from 09.03.1993 to 14.06.1993 & from 21.05.1997 to 31.07.1999	03	04	11
2.	Convicted Period	24.12.2002 to 22.12.2016	13	11	28
Total=			17	04	09
3.	Overstay/absent period (-) From 08.06.2005 to 20.06.2010		05	01	09
Actual Sentence			12	03	0
4.	Remission earned (+)		04	07	09
Total=			16	10	09
5.	Parole availed(-)		00	07	14
Total Sentence			16	02	25

As per details given above, the petitioner has not completed his requisite 14 years of actual sentence and 20 years of total sentence including remission and deducting parole period. Hence, the petitioner is required to be re-called to undergo his requisite sentence as per para 2(a)(xii)&(xiv) of the policy dated 12.04.2002. It is pertinent to mention here that the **petitioner cannot claim the premature release as a matter of right. It is only a concession given by the State Government after considering the behaviour of the convict inside the jail.”**

11. The aforesaid period has been calculated by taking his custody upto 22.12.2016 into account as the petitioner has been on interim bail since 22.12.2016, pursuant to order dated 19.12.2016 passed in CRWP No. 1280 of 2016 (Annexure P-7) which was somehow, further directed to continue vide order dated 3.4.2017 passed in the present case. From the aforesaid

details, it is revealed that while the actual sentence undergone by the petitioner till date is 12 years and 3 days, the total sentence including remissions works out 16 years 2 months and 25 days.

12. It is not in dispute the the case of the petitioner for his premature release has to be considered in accordance with policy dated 12.4.2002 (Annexure P-3) i.e. the policy in force at the time of conviction of petitioner. The relevant extracts from the said policy dated 12.4.2002 (Annexure P-3) read as follows :-

- “ Reference your memo No.29896-GI/G-3 dated 29.10.2001 on the subject noted above.
2. In supersession of Haryana Govt. memo no.36/135/91-1JJ(II) dated 08.08.2000 which was further substituted bearing same no. and date on 23.02.2001, the Govt. have decided to revise the policy regarding, premature release of life convicts as follows :-

Para 2(aa)

(aa)	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) Murder after rape repeated/ chained rape/unnatural offences (ii) Murder with intention for the ransom. (iii) Murder of more than two persons. (iv) Persons convicted for second time for murder (v) Sedition with murder.	Their cases may be considered after completion of 20 yrs. actual sentence and 25 years total sentence with remissions.
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Para 2(a)

(a)	Convicts who have been imprisoned for life having committed a heinous crime such as :- (i) Murder with wrongful confinement for extortion/robbery (ii) Murder with undergoing life sentence (iii) Murder with dacoity (iv) Murder with offence under TADA Act, 1987 (v) Murder with untouchability (Offences) Act, 1955 (vi) Murder in connection with dowry	Their cases may be considered after completion of 14 years of actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 20 years.
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	(vii) Murder of a child under the age of 14 years (viii) Murder of a woman (ix) Murder after abduction or kidnapping (x) Murder exhibiting brutality such as cutting the body into pieces or burning/dragging of the body as evident from judgment of the court. (xi) Persistent bad conduct in the prison (xii) Convicts who cannot for some definite reasons be prematurely released without danger to public safety (xiii) Convicts who have been imprisoned for life under section 120-B IPC (xiv) Any other crime that the State Level Committee considers to be 'heinous' for the reasons to be recorded in writing.	
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Para 2(b)

2(b)	Adult life convicts who have been imprisoned for life but whose cases are not covered under (aa) and (a) above and who have committed crime which are not considered heinous as mentioned in clause (aa) & (a) above.	Their cases may be considered after completion of 10 years of actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 14 years.
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13. While the contention of the petitioner is that his case would be covered under Para 2(b) of aforesaid policy, the stand of State is that it is the more stringent provisions of para 2(a) which would be applicable as his case is fully covered under paras 2(a)(xii) and 2(a)(xiv) of policy dated 12.4.2002 (Annexure P-3). In order the examine as to whether the case of the petitioner falls under paras 2(a)(xii) and 2(a)(xiv) of policy dated 12.4.2002, the said paras/sub-paras are extracted herein under:

(xii) Convicts who cannot for some definite reasons be prematurely released without danger to public safety.

(xiv) Any other crime that the State Level Committee considers to be 'heinous' for the reasons to be recorded in writing.

14. It is the conduct and antecedents of the petitioner which hold the key to opine as to whether release of the petitioner would be endangering 'public safety' and it is the manner and the circumstances under which the offence was committed which could determine as to whether the offence can be termed as 'heinous' or not . The State in its reply has furnished details of the other cases against the petitioner in Para 2 of preliminary submissions in the amended reply dated 14.1.2020, which reads as under :-

“2.That the petitioner is a hardened criminal and was involved in 13 serious criminal offences of robbery, assault on Government servant, theft, under Arms Act, Parole Act, Excise Act. NDPS Act etc, the detail of which is as under:

Detail of pending cases:

- (i) Facing trial in FIR No. 205/10 U/s 4/25 of Arms Act, P.S. Kardhani-On bail.

Detail of conviction in other cases:

- (ii) In case FIR No. 425 dated 18.06.2002 U/s 323/324/353/34 IPC, P.S. Sadar Hisar, convicted and sentenced to two years rigorous imprisonment by the Ld. Addl. Session Judge, Hisar on 14.12.2010 and was released on expiry of sentence after setting off undertrial period.
- (iii) In case CRO No. 548/03 FIR No. 218/97 U/s 392/342/324 IPC. P.S. Hanumangarh (Rajasthan), convicted and sentenced to two years rigorous imprisonment and fine of 7000/-, by the Ld. ACIM. Hanumangarh (Rajasthan) on 16.03.2012 and was released on expiry of sentence on 16.03.2012 after setting off undertrial period.
- (iv) In case FIR No. 429 dated 23.06.2005 U/s 8/9 of Haryana Good Conduct Prisoners (Temporary Release) Act, P.S. Sadar Hisar, convicted and sentenced to imprisonment already undergone, by the Ld. JMIC, Hisar on 04.11.011.
- (v) In case FIR No. 41 dated 02.02.1989 U/s 397 IPC, P.S. Civil Lines. Hisar, convicted and sentenced to imprisonment already undergone, by the Ld. JMIC, Hisar on 14.12.2010.

- (vi) In case FIR No. 426 dated 18.06.2002 U/s 61-1-14 of the Excise Act, P.S. Sadar Hisar, convicted and sentenced to imprisonment already undergone, by the Ld. JMIC, Hisar on 16.11.2010.
- (vii) In case FIR No. 556 dated 04.07.2010 U/s 174-A IPC, P.S. Sadar Hisar, convicted and sentenced to imprisonment already undergone, by the Ld. ACJM, Hisar on 02.12.2010.
- (viii) In case FIR No. 555 dated on 04.07.2010 U/s 174-A IPC, P.S. Sadar Hisar, convicted and sentenced to imprisonment already undergone, by the Ld. ACJM, Hisar on 02.11.2010.
- (ix) In case FIR No. 544 dated 16.06.2001 U/s NDPS Act & Excise Act, P.S. Sadar Hisar, convicted and sentenced to three months rigorous imprisonment and fine of Rs. 3000-/ by the Ld. Addl. Sessions Judge, Hisar on 04.10.2010 and was released on 04.10.2010 on expiry of sentence after setting off undertrial period.

Detail of other decided cases:

- (i) In case FIR No. 128/1997 U/s 397/324/34 IPC, P.S Hanumangarh (Rajasthan)-Disposed.
- (ii) In case FIR No. 27 dated 24.02.1995 U/s 392/1 20-B/34 IPC. P.S. Ding, acquitted by the Ld. JMIC, Sirsa on 06.03.2003.
- (iii) In case FIR No. 339 dated 25.07.2001 U/s 399-402 IPC & Arms Act. P.S. City Fatehabad, acquitted by the Ld. Addl. Sessions Judge, Fatehabad on 24.12.2010.
- (iv) In case FIR No. 71 dated 22.02.1999 U/s 332/353/1 86/224/511 IPC. P.S. Civil Line Hisar, acquitted by the Ld. JMIC, Hisar on 21.09.2010.”

15. A perusal of the aforesaid FIRs would indicate that the petitioner already stands convicted in as many as 9 other cases including cases registered for offences under Sections 323, 324, 325, 353, 392, 394 IPC and also for offence under the Excise Act and under the NDPS Act. The fact that the petitioner absconded while availing parole and remained absconder for a good 5 years would also reflect adversely on his conduct. Further, the manner of killing the deceased and also the motive for same also reflects on psyche of petitioner. The deceased was killed by petitioner and co-accused merely on suspicion that he was a police informer and had got the accused

arrested earlier in robbery case. The manner in which 18 injuries were caused including multiple penetrating stab injuries in abdomen and chest and six injuries on head shows that petitioner is ruthless. His occipital bone was found cut and brain was visible. Several injuries were on neck. The antecedents of petitioner and the manner in which deceased was murdered on a mere suspicion clearly shows that the petitioner can be a potential threat to public safety and that deceased had been murdered with brutality and in a heinous manner. Thus, the case of petitioner would fall in the categories defined in paras 2(a)(xii) and 2(a)(xiv) of policy dated 12.4.2002 (Annexure P-3).

16. **Question no (ii) :**

- (ii) Whether, on account of the petitioner already having undergone term sentences imposed on him in respect of other offences committed by him in the same case or in other cases, such other offences are not to be taken into account for the purpose of assessing his antecedents while considering his entitlement for premature release?

The learned counsel in order to impress upon his submission that the offences in respect of which sentences have already been undergone lose their effect and cannot be taken into account against the convict relies upon two judgements i.e 2019(2) RCR (Criminal) 118 State of Tamil Nadu and others versus P. Veera Bhaarthi and 2019(2) RCR (Criminal) 923 Rajan Versus The Home Secretary, Home Department of Tamil Nadu and Ors.

17. A perusal of the judgment rendered in P. Veera Bhaarthi's case (supra), would show that the facts and the rules applicable therein were substantially different. Infact under the rules applicable therein i.e. the Tamil Nadu Prison Rules, 1983, there was an anomalous situation. While under certain circumstances, a convict was absolutely barred from even being considered

for premature release whereas another convict held guilty of having committed more heinous offence could be released prematurely. The relevant extracts from Rule 341 of the said Tamil Nadu Prison Rules, 1983, which were under consideration in said judgement are reproduced herein-under:-

Rule 341:

"(1) The sentences of all prisoners sentenced to imprisonment for life or to more than twenty years imprisonment in the aggregate or imprisonment for life and imprisonment for terms exceeding in the aggregate twenty years shall, for the purpose of this rule, be deemed to be sentences of imprisonment for twenty years.

(2) The cases of prisoners undergoing imprisonment for life shall, ordinarily be placed before the Advisory Board as constituted for consideration as to whether their parole will be recommended, on completion of ten years of actual imprisonment:

Provided that

(3) The cases of prisoners sentenced to more than three years, excepting lifers to whom sub-rule (2) applies, shall be placed before the Advisory Board if they have served two thirds of their sentence including remission:

Provided that prisoners of the following categories who have been sentenced to imprisonment for more than three years or imprisonment for life shall not be eligible for premature release under the Advisory Board Scheme :-

- (i) Prisoners convicted of rape, dacoity, terrorist crimes, offences against the State or prisoners sentenced under section 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489A, 489B and 489D of the Indian Penal Code (Central Act XLV of 1860);
- (ii) Prisoners convicted of economical offences, black marketing, smuggling or misuse of power and authority;
- (iii) Prisoners sentenced under the Prevention of Corruption Act, 1988 (Central Act 49 of 1988), the Suppression of Immoral Traffic in Women and Girls Act 1956, (Central Act 104 of 1956), the Drugs and Cosmetics Act, 1940 (Central Act XXIII of 1940), the Drugs Control Act, 1949 (Tamil Nadu Act XXX of 1949), the Dangerous Drugs Act, 1930 (Central Act II of 1930), and the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 (Central Act 21 of 1954) or the Prevention of Food Adulteration Act, 1954 (Central Act 37 of 1954).
- (iv) Prisoners sentenced for Offences under Sections 498A and 306B of the Indian Penal Code (Central Act XLV of 1860);
- (v) Prisoners sentenced for the offence of selling illicit arrack mixed with poisonous substances;
- (vi) habitual forest offenders who are responsible for disturbing the ecological balance; and
- (vii) Prisoners sentenced for offences wherein minimum sentences are prescribed

The cases of prisoners imprisoned for failure to give security under Chapter VIII of the Code of Criminal Procedure 1973 (Central Act 2 of 1974) and Criminal lunatics shall not be placed before the Advisory Board.

Explanation (1).- The cases of prisoners convicted by Court Martial shall also be placed before the Advisory Board for consideration under sub-rules (2) and (3).

Explanation (2).- Sentences of imprisonment for failure to furnish security shall not be taken into account in determining the aggregate sentence for the purpose of sub-rules (2) and (3).

Explanation (3).- The set off period specified in section 428 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) shall be taken into account in the case of all prisoners excepting lifers, to whom Explanations (2) and (3) of sub-rule (2) shall apply and to those sentenced to imprisonment not being in default of payment of fine, in determining the period of sentence served for the purpose of sub-rule (3).

Provided that prisoners of the following categories who have been sentenced to imprisonment for more than three years of imprisonment for life shall not be eligible for premature release under the Advisory Board Scheme.

- i. Prisoners convicted of rape, forgery, dacoity, terrorist, crimes, offences against the State or Prisoners sentenced 474, 489-A, 489-B and 489-D of the Indian Penal Code (Central Act XLV of 1980).
- ii. Prisoners convicted of economic offences, black marketing smuggling or misuse of power and authority; and
- iii. Prisoners sentenced under the prevention of corruption Act, 1988 (Central Act 49 of 1988) the Suppression of Immoral Traffic in Women and Girls and cosmetics Act, 1940 (Central Act XXIII of 1940), the Drugs Control Act 1949 (Tamil Nadu Act XXX of 1949), the Drugs and Magic Remedies (objectionable advertisements) Act 1954 (Central Act 21 of 1954 (Central Act 37 of 1954) and the Dangerous Drugs Act, 1930 (Central Act II of 1930)."

18. In P. Veera Bhaarthi's case (supra), the accused had been sentenced to undergo life imprisonment for offence under Section 302 IPC and another sentence of rigorous imprisonment for 7 years in respect of offences under Sections 376 IPC. Although, Rule 341(3) of the Tamil Nadu Rules prescribed a bar for premature release of a life convict who had also been sentenced for offence under Section 376 IPC, but in the said case, the Madras High Court took a view that since the convict had already served out the sentence imposed upon him for offence punishable under Section 376 IPC, he would be entitled for consideration of his case for his premature release. While taking said view, the High Court relied upon a clarificatory

letter dated 4.11.1989 issued by Inspector/Director General of Prisons wherein it was clarified that in case a life convict is also convicted and sentenced to undergo minor imprisonment under 'ineligible' sections of IPC as stipulated in G.O. (Ms) No.1762, Home Department, dated 20th July, 1987 and such sentences had been ordered to run concurrently and in case, he had already served out the sentence in respect of such ineligible sections, the petitioner should be considered for his premature release in respect of the life sentence imposed upon him for offence under Section 302 IPC. The State, aggrieved by the same, filed SLP in the Hon'ble Supreme Court.

19. The question formulated for consideration by the Hon'ble Supreme Court in Para 4 of the judgment reads as under :-

“4. The moot point that would require consideration is whether the respondent who has been convicted under section 302 IPC and sentenced to rigorous imprisonment for life and also under section 376 IPC and sentenced to rigorous imprisonment for seven years is entitled for early release under the provisions of Rule 341 of the Rules on completion of his present prison term which is about 16 years.”

20. Hon'ble Supreme Court while noticing the contentions put forth on behalf of State held as under:

“7. In other words, the argument on behalf of the appellants is that if a person is to be convicted and sentenced under an ineligible Section/ineligible offence he would not be entitled to the benefit of early/premature release under the Prison Rules.

8. The operation of the Rules in the manner as suggested on behalf of the appellants would result in a highly incongruous situation which the rule making authority could not have been understood to have contemplated or envisaged. *Higher offences involving sentence of imprisonment for life or even death sentence commuted to life imprisonment, if not coupled with convictions under the ineligible section(s), would entitle a convict to consideration of his case for early release. But, if a lifer is to be convicted for a much lesser offence, say, offences under Section 224, 498A IPC, etc. and sentenced to small periods of*

imprisonment, notwithstanding the fact that he had completed more than 10 years of custody, he would still not be eligible for early release. Such a situation, in our considered view, cannot be allowed to prevail by understanding the operation of the Rules in the manner suggested on behalf of the appellants.”

(emphasis supplied)

21. It was, thus, on account of the anomalous position brought about by the Tamil Nadu Rules which under some circumstances absolutely disentitled a convict for pre-mature release that the Supreme Court found the same ‘*incongruous*’ and upheld the judgment of High Court. In other words, the absolute bar prescribed under Tamil Nadu Rules was found arbitrary and was, therefore, diluted. It may here be mentioned that even Hon’ble Supreme Court in the concluding paragraph clarified that the only right vested in convict was of consideration. The said para is reproduced herein under:

“13. The case of the respondent will now be decided by the Advisory Board in accordance with law. We make it clear that we have not expressed any opinion on the entitlement of the respondent for early release.”

22. It needs to be mentioned that, under the policy dated 12.4.2002 (Annexure P-3), applicable to petitioner, there is no such absolute bar against consideration for premature release of convict. Even a murderer who has committed murder for second time is entitled for being considered for premature release, though after a longer period of 20 years.
23. The other case relied upon by the petitioner also i.e. Rajan’s case (supra), also pertained to State of Tamil Nadu, where a convict would be governed by Tamil Nadu Prison Rules, 1983 . In the cited case, the convict had been held guilty for offences under Sections 395, 302 IPC (on three counts),

under Section 304 (on four counts) and Section 3 read with Sections 25(1A) and 27(3) of the Indian Arms Act and had been sentenced to life imprisonment on each count and wherein the case of the said convict for his premature release had been declined by the authorities concerned though he had already undergone actual imprisonment of 30 years and had also earned remissions to the tune of 6 years making a total undergone period as 36 years. The premature release was declined mainly on the ground that the petitioner also stood convicted for offences under the Arms Act and that in such cases Central Government was a necessary party which had not been impleaded as such.

24. Hon'ble Supreme Court, while dealing with issue held that since Section 27(3) of the Arms Act had been declared *ultra vires* by the Hon'ble Supreme Court in judgment rendered in (2012) 3 SCC 346 State of Punjab v. Dalbir Singh, the conviction of the petitioner in respect of the said offence could not be taken into account. Further, Hon'ble Supreme Court while relying upon Muthuramalingam's case held that sentences in respect of offences under Section 395 IPC and Section 25(1A) and 27(3) of the Arms Act which were to run concurrently could not be reckoned for considering the proposal for premature release as he had already undergone the same. The relevant extract from the said judgment reads herein-under :-

10.However, in view of the exposition of the Constitution Bench in *Muthuramalingam and Ors. v. State represented by Inspector of Police* 2016(3) RCR (Criminal) 827 : (2016) 8 SCC 313, we must immediately accept the stand of the petitioner that the sentences in respect of offences under Section 395 IPC and Section 25(1A) of the Arms Act also cannot be reckoned for considering the proposal for premature release of the petitioner. For, he has already undergone the sentence periods awarded for the said offences which were to run concurrently.

11. Indeed, the counsel for the respondents made a fervent effort to persuade us that the said sentences will also have to be taken into account for considering the proposal for premature release and in that case, consultation with the Central Government would be inevitable. We are not impressed by this submission. For, on a plain reading of the order passed by the Trial Court along with the modified sentence order passed by the High Court, **it is indisputable that the sentences for offences punishable under Section 395 IPC and Section 3 read with Section 25(1A) of the Arms Act, were to run concurrently.** The petitioner has already undergone the sentence awarded in relation to the said offences on expiry of 7 years and 5 years, respectively. This position is reinforced from the exposition of the Constitution Bench in *Muthuramalingam* (supra).....
25. The interpretation that can be discerned from above referred exposition is qua “reckoning of sentences” where such sentences are to run concurrently. It has been clarified that a lifer can’t be disentitled for being considered merely on account of other sentences imposed on him. There is no such observation to the effect of multiple offences gets absolutely washed off upon undergoing sentence and is not a consideration while considering eligibility for premature release. Hon’ble the Supreme Court, while making aforesaid observations relied upon a judgment of Hon’ble Constitution Bench of Supreme Court rendered in *Muthuramalingam’s case* (supra), the relevant extract from which reads as under :-

"23. Parliament, it manifests from the provisions of section 427(2) CrPC, 1973 was fully cognizant of the anomaly that would arise if a prisoner condemned to undergo life imprisonment is directed to do so twice over. It has, therefore, carved out an exception to the general rule to clearly recognise that in the case of life sentences for two distinct offences separately tried and held proved the sentences cannot be directed to run consecutively. The provisions of section 427(2) CrPC, 1973 apart, in **Ranjit Singh case 1991(3) RCR (Criminal) 470 : (1991) 4 SCC 304**, this Court has in terms held that since life sentence implies imprisonment for the remainder of the life of the convict, consecutive life sentences cannot be awarded as humans have only one life. That logic, in our view, must extend to section 31 CrPC, 1973 also no matter Section 31 does not in terms make a provision analogous to Section 427(2) of the Code. The provision

must, in our opinion, be so interpreted as to prevent any anomaly or irrationality. So interpreted section 31(1) CrPC, 1973 must mean that sentences awarded by the court for several offences committed by the prisoner shall run consecutively (unless the court directs otherwise) except where such sentences include imprisonment for life which can and must run concurrently. **We are also inclined to hold that if more than one life sentences are awarded to the prisoner, the same would get superimposed over each other. This will imply that in case the prisoner is granted the benefit of any remission or commutation qua one such sentence, the benefit of such remission would not ipso facto extend to the other.**

(emphasis supplied)

26. The interpretation by Constitution Bench in Muthuramalingam's case (supra), has highlighted the principle enshrined in provisions of Section 427(2) Cr.P.C., to the effect that the term sentences imposed alongwith life sentences are essentially to run concurrently. The said principle cannot be interpreted to mean that while considering the case of the petitioner for his premature release, the offences for which the sentences has already been undergone is to be overlooked. Rather, interestingly, the Hon'ble Supreme Court in Muthuramalingam's case (supra), held that where multiple life sentences have been awarded, the same would run concurrently but they would be 'superimposed over each other in such a manner' that remission or commutation granted by competent authority in one such sentence, would not *ipso facto* result in remission of sentence awarded to the prisoner qua to the other.
27. The Constitution Bench of Hon'ble Supreme Court in Muthuramalingam's case (supra) has further clarified in Para 16 that premature release cannot be claimed as a matter of right and is to be granted by the State Government after considering all the relevant factors, as reproduced below :-

“16. The petitioner would, however, rely on the unreported decision of this Court in **Ram Sewak** (supra), to contend that this Court may direct the authorities to release the petitioner forthwith and that there is no point in directing further consideration by the State as the petitioner had already undergone over 30 years of sentence and with remission, over 36 years. The order passed by this Court in **Ram Sewak** (supra), is obviously in the facts of that case. As a matter of fact, it is well settled by now that grant or non-grant of remission is the prerogative to be exercised by the competent authority and it is not for the Court to supplant that procedure. Indeed, grant of premature release is not a matter of privilege but is the power coupled with duty conferred on the appropriate Government in terms of sections 432 and 433 of Cr.P.C., 1973 to be exercised by the competent authority after taking into account all the relevant factors, such as it would not undermine the nature of crime committed and the impact of the remission that may be the concern of the society as well as the concern of the State Government.”

28. The import of the two judgements coupled with exposition of law by Hon’ble Supreme Court in Constitution Bench in Muthuramalingam’s case (supra) is, thus, intended to clarify that in cases of multiple term sentences imposed alongwith sentence of life imprisonment, the term sentences are to run concurrently, and once the term sentences stand completed having run concurrently, the case of the convict for his premature release cannot be withheld on the count that he is yet to undergo sentence in respect of term sentences. There possibly can be no dispute with respect to the said proposition of liability. However, none of the said judgments has held or can be construed to have held that the factum of such other convictions is to be absolutely overlooked. It will be a fallacy to interpret the cited judgments in the manner suggested by counsel for the petitioner. Reckoning of sentence and considering conduct are two different things. Since the rules in Tamil Nadu absolutely debarred a convict of his being considered for premature release in case he had committed ‘ineligible’ offence, the Supreme Court

clarified that he could be considered upon the convict having undergone such term sentence for 'ineligible' offence leaving the discretion with authorities concerned to decide whether to release such convict or not.

29. Thus, the authorities pressed into service cannot be interpreted to mean that the antecedents of convict with regard to commission of other offences, upon having undergone sentence for such other offences, is to be overlooked while considering his case for premature release. *Question no. (ii)* is decided accordingly.

30. **Question no (iii) :**

(iii) Whether, the petitioner is entitled to be prematurely released on grounds of parity as identically situated co-accused Inder had already been ordered to be released prematurely ?

The contention of the petitioner that his co-accused Inder who is identically situated with regard to the allegations, sentence imposed and sentence undergone has already been ordered to be released prematurely is not of much avail to the petitioner inasmuch as the authorities concerned, upon realising that said co-accused Inder had been released against the rules, have already recommended recall of said order pertaining to Inder, so as to make him serve his remaining sentence. In any case, the petitioner cannot take benefit on account of the authorities concerned having committed a mistake on one occasion inasmuch as the authorities concerned cannot be forced to commit the same mistake again particularly when the respondents upon coming to know about the error on their part have already initiated proceedings for recalling the said order passed in favour of the accused. Question no (iii) is answered accordingly.

31. In the present case, this Court upon examining the facts and circumstances of the case found that the case of the petitioner does not fall under provisions of Para 2(b) of policy dated 12.4.2002 of the said policy. Since the petition had been pending in this Court since the last about 6 years, the circumstances would have changed substantially. As such, the authorities concerned are directed to consider the case of the petitioner afresh in accordance with law and in accordance with his eligibility. While considering the case of the petitioner, the authorities concerned shall duly take into account the conduct of the petitioner during the period he has remained on interim bail i.e. w.e.f. 19.12.2016 till date.
32. Needless to mention, with the disposal of this petition, the interim orders as were operative in the present case shall also cease to operate. The petitioner is directed to surrender in the Court of the Chief Judicial Magistrate concerned within 10 days from today. The Chief Judicial Magistrate concerned shall do the needful for sending the petitioner to jail to serve his remainder part of sentence. The authorities concerned shall consider the matter as regards petitioner’s premature release afresh expeditiously preferably within 4 months from the day the petitioner is re-admitted in jail.

24.5.2023

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No