

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2023:PHHC:074642
CRWP-7294-2022
Date of Decision: May 22, 2023

Kulwinder Singh @ Sonu

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Suram Singh Rana and Mr. Arvind Kumar Sharma, ``
Advocates for the petitioner.

Mr. Gurpreet Singh Shergill, AAG, Punjab.

DEEPAK GUPTA, J.

By way this criminal writ petition filed under Article 226 of the Constitution of India, prayer is made for issuance of writ in the nature of *certiorari* to quash impugned order dated 10.5.2022 (Annexure P/3); and further writ in the nature of *mandamus* to direct the respondents to release the petitioner prematurely, in view of the Government Policy dated 08.07.1991 (Annexure P/1).

2. Petitioner was convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹2,50,000/- with default sentence of 5 years in case FIR No.58/2004, under Sections 302 /34 of IPC, registered at Police Station Islamabad, Amritsar by the Court of learned Additional Sessions Judge (Ad hoc), Amritsar. Appeal filed by him was dismissed by this Court on 21.07.2010 in CRA-434-DB-2008.

3. According to the petitioner, he has already undergone more than 15 years and 6 months of actual sentence of imprisonment and more than 23 years with remission, though as per the Government Policy dated 08.07.1991 (Annexure P-1), he is required to undergo 10 years actual

sentence and sentence of 14 years by including remission period. Repeated representations made by the petitioner to the Government for his premature release have been dismissed from time to time with last such order passed on 10.05.2022 (Annexure P/3).

4. As per reply filed by way of affidavit of Shri Surinder Singh, Superintendent, Central Jail, Amritsar on behalf of all the respondents, petitioner was required to undergo minimum of 10 years actual sentence and 14 years actual or with remission, as his case is to be considered under the simple category of Premature Release Policy dated 08.07.1991. As on 19.02.2023, petitioner had already undergone actual sentence of 14 years, 01 month and 12 days by excluding the parole period; and total sentence by including remission is 22 years, 01 month and 12 days and thus, petitioner fulfills all the conditions given in the Punjab Government Premature Release Policy dated 08.07.1991. His case for premature release was initially initiated on 07.02.2014, but the same was rejected by the Government on 22.06.2016 on the ground of non-payment of fine of ₹2,50,000/- to the heirs of the victim as per judgment of conviction and also on the ground that he had committed prison offence on 21.07.2014. Petitioner then filed CRWP -10160-2021 before this High Court for his premature release. Vide order dated 26.10.2021, the Court directed to decide the representation of the petitioner within three weeks by passing speaking order. However, the premature release case of the petitioner was not recommended by the District Magistrate vide his letter dated 25.02.2022 (Annexure R-4) on the ground that family of the petitioner was no longer residing at the address provided by the petitioner and had shifted to some unknown place. Petitioner then filed COCP-340-2022

regarding premature release, but the same was withdrawn on 29.09.2022, so as to challenge the order dated 10.05.2022. Petitioner again applied for premature release by mentioning his present address to be that of Ludhiana, where his brother resided, but again District Magistrate, Ludhiana did not recommend premature release of the petitioner on the ground that he had never availed parole/furlough earlier on the address provided by him; that he was involved in three criminal cases at Amritsar including murder, fighting and causing hurt; that he had earlier remained proclaimed offender; and that he can disturb public peace at Ludhiana, where he was not known to anyone. The status report of the respondents further reveal that opinion of the Presiding Judge was also obtained regarding the premature release and vide letter dated 16.12.2022, learned District and Sessions Judge, Amritsar commented that there was no restriction imposed by the Court qua remission/premature release of the convict and that Government could consider the case of convict as per their policy. Thus, respondents in fact supported the cause of the petitioner for his pre-mature release.

5. Having considered submissions of both the sides, this Court finds that prayer of the petitioner for premature release, despite falling within all the parameters of the Policy dated 08.07.1991, has been repeatedly rejected due to arbitrary misuse of powers by the authorities. Although, the petitioner requires to undergo actual sentence of 10 years; and sentence of 14 years by including the remission period, as per Policy, but despite having undergone actual sentence of more than 14 years; and total sentence of more than 22 years by including remission, he is not being released for one or the other reason.

6. In *“Bhagwat Saran and others v. State of Uttar Pradesh and others”*, 1983(1) SCC 389, the Committee had recommended release of prisoners after taking into consideration the behaviour inside the jail as well as other factors, but his case was rejected by the Government on the ground of law and order situation. It was held by Hon’ble Supreme Court that a bald statement like that without any attempt to indicate how to law and order is likely to be adversely affected by the release of the convict, cannot be accepted. The Court directed the petitioners to be released forthwith.

7. In *“Kamal Kant Tiwari v. State of Punjab and others”* 2014(2) R.C.R. (Criminal) 940, it has been held by this Court that jail offence committed by a life convict cannot be taken into consideration while considering his case for grant of premature release as the convict will have to face consequences for jail offence separately.

8. In case, petitioner has not paid the fine imposed by the court, he is required to undergo default sentence as per the trial court judgment but that can not be reason to consider petitioner’s case for premature release. If family of petitioner has shifted from earlier address of Amritsar, that again can not be the reason to decline the relief, once petitioner has fulfilled the parameters provided in the policy.

9. In this case, another reason of rejecting the premature release of the petitioner is that he was not known to any body in Ludhiana, of which place he had provided his address. It is the contention of the petitioner that his family having shifted during his jail period, so he wants to live with his brother, who is a police official in Ludhiana. Simply because petitioner is not known to anyone in Ludhiana, cannot be

a ground to presume that his presence there will create a law and order situation. The authorities could have verified the fresh address of Ludhiana as provided by petitioner, where he wants to live with his brother.

10. Having regard to all the aforesaid discussion, this petition is hereby allowed. The impugned order dated 10.05.2022 is hereby quashed. Respondents by way of writ of mandamus are hereby directed to release the petitioner forthwith, if not required in any other case.

May 22, 2023
sarita

(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking: Yes/No
Whether reportable: Yes/No