

**In the High Court for the States of Punjab and Haryana
At Chandigarh**

CRWP-9645-2021 (O&M)
Date of Decision:-30.1.2023

Rakesh Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Vijay K.Jindal, Advocate for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 29.7.2021 (Annexure P-5) vide which respondent – State of Haryana while considering the case of the petitioner for his premature release has ordered that the case be deferred for three years and that the same would be re-considered after three years subject to his good conduct during the said deferred period.
2. The petitioner was tried by the Court of Sessions, Rewari in respect of FIR No. 151 dated 2.8.2021, Police Station Khol, District Rewari, under Sections 302, 307, 394, 216-A, 213/120-B of Indian Penal Code and was held guilty alongwith two other accused vide judgment dated 27.7.2006 (Annexure P-1) passed by learned Sessions Judge, Rewari. The sentence imposed upon the petitioner vide order dated 29.7.2006 is reproduced herein under :-

“Looking into the ages, character and the other antecedents, I sentence each of the convicts as under :-

Sr. No.	Offence under Section	Sentence	Fine	Sentence in default of payment of find (Further R.I.)
1	120-B IPC	R.I. for Two years	Rs. 500/-	Three months
2	302 IPC	Imprisonment for life	Rs. 2,000/-	Six months
3	307 IPC	R.I. for Five years	Rs. 1,000/-	Four months
4	394 IPC	R.I. for Ten years	Rs. 2,000/-	Six months
5	25 of Arms Act	R.I. for one year	Rs. 1,000/-	Four months”

3. The case of the petitioner was considered for premature release in accordance with policy dated 12.4.2002 (Annexure P-2) but his case was deferred vide impugned order dated 29.7.2021. The relevant extract from Para 2 of the impugned order dated 29.7.2021 (Annexure P-5) is reproduced herein under :-

“2.The date of conviction of the convict is 29.07.2006. Hence, the policy of premature release dated 12.04.2002 is applicable in this case. This convict has further committed two jail offences, the details of which are as under:

- i. On 12.05.2010, surrendered after lock up: Warned by the Superintendent Jail.
- ii. On 16.05.2012, absconded from parole for 01 year, 06 months 24 days: A case FIR No. 470/2010 U/s 8/9 Haryana Good Conduct Prisoners Act, PS. Sadar Bahadurgarh was registered against him. Convicted and sentenced to imprisonment as already undergone on 03.02.2014.

This life convict was also involved in the following two other criminal offences whose detail is as under :-

- i. FIR No. 27/1998 U/s 392 IPC, P.S. Sampla was registered against him. Convicted and sentenced to imprisonment as already undergone on 10.10.2006.
- ii. FIR No. 168/2012 U/s 174-A/229-A IPC, P.S Sadar Bahadurgarh was registered against him. Convicted and sentenced to imprisonment as already undergone on 03.02.2014.

The State Level Committee in its meeting dated 07.06.2021, has considered his case under para 2(a)(iii) of the Premature Release Policy dated 12.04.2002 and has observed that this life convict alongwith his co-accused had committed double murder of two innocent govt. employees i.e. Principal and Lecturer of Government Senior Secondary School, village Kund who were performing their official duty and

had gone to withdrawal of salary of the employees of the school, and the salary was robbed, which is a very heinous crime.

Further, this life convict had also absconded from parole for 01 year, 06 months and 24 days and had misused the Government concession. In view of these facts, this life convict does not deserve any concession from the Government at this stage and the State Level Committee has recommended that the case for premature release of this life convict be deferred for 3 years.

Moreover, no convict has fundamental right of remission or shortening of sentence. In fact, these are privileges granted by the State to the convict prisoners. The State Government in exercise of its executive/discretionary power of remission, is to consider each individual case keeping in view all relevant factors.”

4. Learned counsel for the petitioner has submitted that the period of total custody, as on date, is more than 20 years and even the actual custody is more than 18 years and as such, the petitioner deserves to be released prematurely.
5. It has been vehemently argued that the authorities concerned have not considered his case under the appropriate provisions and have incorrectly considered his case under provisions of Para 2(a)(iii) of policy dated 12.4.2002 whereas the said provisions would be applicable only in a case where murder has been committed while committing dacoity and since in the instant case, no such charges for dacoity were framed and nor the petitioner has been convicted either for offence under Section 395 or Section 396 IPC, therefore, the impugned order cannot sustain and is liable to be set aside.
6. This Court has considered the aforesaid submissions.
7. The allegations, in nutshell, are that the petitioner alongwith nine co-accused had committed the offence of double murder of Mahabir, Principal and Ram Kishan, Lecturer and had also inflicted injuries to Lal Singh by fire shots from country-made pistol and revolver and had robbed an amount of

Rs. 3,14,000/-, which was salary of the employees. Pursuant to framing of charges, the petitioner was convicted for having committed offences under Sections 302, 307, 394, 120-B IPC and Section 25 of the Arms Act.

8. Before proceeding further, it is apposite to refer to the relevant provisions pertaining to 'robbery' and 'dacoity' and the distinctions therein and also the relevant provisions where sentence is prescribed. Sections 390, 391, 392, 394, 395 and 396 IPC are reproduced herein under :-

390. **Robbery.**—In all robbery there is either theft or extortion.

When theft is robbery.—Theft is “robbery” if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.

When extortion is robbery.—Extortion is “robbery” if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

391. **Dacoity.**—When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.

392. **Punishment for robbery.**—Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and, if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

394. **Voluntarily causing hurt in committing robbery.**—If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with 1[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

395. **Punishment for dacoity.**—Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

396. **Dacoity with murder.**—If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

9. In the instant case, it was only three accused who were held guilty and have been convicted for offence under Sections 120-B, 302, 307 and 394 IPC and also for offence under Section 25 of the Arms Act. Apparently, since the number of accused found guilty was less than 5, the robbery could not have been termed as ‘dacoity’.

10. In other words, the petitioner was neither convicted for offence of ‘dacoity’ (Section 392 IPC) nor for having committed ‘dacoity with murder’ (Section 396 IPC).

11. Now, coming to the relevant provisions of policy dated 12.4.2002, Para 2 of the same is reproduced hereinunder :-

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 :-

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

- (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 while undergoing life sentence

(iii) **Murder with dacoity**

(iv) xx xxx xxx

to

(xiv)
- Their cases may be considered after completion of 14 yrs. actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 20 years.

12. A perusal of the impugned order shows that the case of the petitioner for his premature release has been considered under provisions of Para 2(a)(iii) of policy dated 12.4.2002 (Annexure P-2) whereas the petitioner has never been convicted for offence of dacoity. In these circumstances, the petitioner not having been considered under the correct provisions of the policy, the impugned order cannot sustain and is hereby set aside.
13. The competent authority is directed to reconsider the matter afresh in accordance with the provisions of relevant policy of premature release, as applicable to him and to take a decision expeditiously, preferably within a period of 3 months from receipt of copy of this order.

30.1.2023
kamal

(Gurvinder Singh Gill)
Judge

Whether reasoned/speaking

Whether reportable

Yes / No

Yes / No