

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

CRWP-9031-2022 (O&M)
Date of Decision:- 22.2.2023

Sarabjit Singh @ Sonu

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present: Mr. Suram Singh Rana, Advocate for the petitioner.

Mr. Luvinder Sofat, DAG, Punjab.

GURVINDER SINGH GILL, J.

1. The petitioner seeks issuance of directions to respondents to release him prematurely in accordance with the instructions/policy dated 8.7.1991 (Annexure P-1) issued by the Government of Punjab.
2. The petitioner was tried for offence under Section 302 IPC arising out of FIR No. 39 dated 31.8.2008 at Police Station Talwandi Chaudharian, District Kapurthala and had been held guilty by learned Sessions Judge, Kapurthala vide judgment dated 26.2.2009 and was ordered to undergo imprisonment for life.
3. The petitioner claims to have undergone actual imprisonment for a period of more than 14 years. With addition of remissions, he is stated to have undergone more than 20 years of sentence. It is the case of the petitioner that in accordance with policy dated 8.7.1991 issued by the Government of Punjab, he is entitled to be released prematurely.

4. The State filed its reply dated 4.12.2022 in the shape of affidavit of Shri Iqbal Singh Dhaliwal, Superintendent, Central Jail, Kapurthala wherein a stand was taken that the report of the Presiding Judge is awaited.
5. This Court, while noticing the aforesaid stand, had passed order dated 13.1.2023 asking the State to furnish information as to under what circumstances Memo dated 17.10.2022 requiring opinion of the Court of Presiding Officer concerned came to be issued. The learned State counsel has today filed an additional affidavit dated 21.2.2023 of Shri Iqbal Singh Dhaliwal, Superintendent, Central Jail, Kapurthala, which is taken on record, wherein he has deposed that it is pursuant to Section 432(2) Cr.P.C., as interpreted by Hon'ble Supreme Court in Union of India Vs. Sriharan, (2016) 7 (SCC) 1, that such reports are being solicited. It is further mentioned therein that the condition regarding soliciting opinion of the Presiding Judge in premature release cases is not mandatorily required in cases being considered under provisions of Article 161 of the Constitution of India. Para 2 of the said additional affidavit reads as follows :-

“That in compliance with the order of Hon'ble Court the Additional Director General of Police (Prisons), Punjab, Chandigarh vide office letter no. G.I/J-5/537 dated 23.1.2023 has written to the office of deponent that as per letter of Government of Punjab, Department of Jails (Home-7 Branch) which was sent vide their memo No. 12/39/2022-4G7/07 dated 13.01.2023 enclosed the fresh legal opinion of Advocate General Punjab and has clarified regarding the opinion of the presiding Judge in the premature release cases of the life convicts is not mandatory in cases of premature release being considered under Article 161.

It has been further opined that opinion of the Presiding Judge is binding on the State Government while exercising powers u/s 432 Cr.P.C. However, if the opinion of the Presiding Judge does not

take into consideration relevant factors, the State Government may seek opinion afresh.”

6. In view of the aforesaid reply, the aforesaid matter is virtually set at rest and needs no further discussion. In the additional affidavit dated 21.2.2023 filed today, it has been deposed that the matter pertaining to premature release of the petitioner is presently under consideration of Government of Punjab.
7. Having regard to the aforesaid position, the instant petition is disposed of with a direction to the authorities concerned to expedite the matter and to take a final decision in the same pertaining to premature release of the petitioner, preferably within a period of two months from today, particularly keeping in view the fact that the matter pertaining to premature release of the petitioner is stated to be pending since the last four years.

22.2.2023

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(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No