

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.224

Case No. : CRWP-10619-2022

Date of Decision : February 20, 2023

Shailender Kadian

.... Petitioner

vs.

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Sandeep Verma, Advocate
for the petitioner.

Mr. J. S. Bhandari, AAG, Punjab.

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GURBIR SINGH, J. :

By way of this petition filed under Article 226 of the Constitution of India, the petitioner has approached this Court for issuance of a writ in the nature of mandamus directing the respondents to decide the case of the petitioner for premature release in compliance of the order dated 19.05.2022 passed in CRWP-1270-2019 (Annexure P-4), whereby the respondents were directed to decide the case of the petitioner within two months but the aforesaid direction of this Court has not been complied with in spite of the fact that respondent no.4 – Deputy Commissioner-cum-District Magistrate, Rohtak has given a report to the effect that there is no impediment in release of the petitioner or threat to peace and security of the State. A further prayer to release the petitioner on interim parole during the pendency of the writ petition has also been made.

Reply by way of affidavit of Surinder Singh, Deputy Inspector General of Prisons, Punjab, Office of Additional Director General of Police (Prisons), Punjab, Chandigarh has been filed today in Court on behalf of respondents no.1 to 3, which is ordered to be taken on record. Along with the reply, a copy of minutes of State Level Committee meeting, which was held on 14.02.2023, has also been filed as Annexure R-1. The same is also taken on record. It was decided in principle in the meeting that case of the petitioner may be considered for premature release. The relevant part of the minutes of the proceedings of meeting is as under :-

“While examining the facts of the case, it was noticed by the Committee that the concerned SSP has not recommended the Premature Release of the convict, whereas Jail Superintendent and District Magistrate have recommended the premature release of the convict. It was also noticed by the Committee that the Presiding Judge has opined to deal with the matter according to law laid down by the Hon'ble Apex Court in Criminal Appeal No.721 of 2021 titled as The State of Haryana and Ors. Versus Raj Kumar alias Bittu and as per this judgment, the premature release case of the convict can be considered for premature release. The ADGP (Prisons) has also recommended Premature Release of the convict. The Committee further noticed that the District Magistrate Rohtak has given a detailed character verification report regarding conduct of the convict and examined various facts while recommending the premature release of the convict. So, keeping in view the jail

conduct of the convict, period of sentence undergone by the convict, report of the concerned District Magistrate and facts of the case, the Committee members unanimously decided in principle that this case may be considered for premature release and submitted to His Excellency Governor of Punjab as the competent authority under Article 161 of the Constitution of India.”

Learned counsel for the petitioner has submitted that the petitioner has already undergone more than 13 years and 10 months of the sentence. By adding remissions, his sentence is more than 21 years. Earlier, vide order dated 19.05.2022 passed in CRWP No.1270 of 2019 (O&M), the State was directed to decide the case of pre-mature release of the petitioner within two months but no decision was taken. The petitioner filed the instant writ petition and after passing of the interim order dated 10.02.2023, whereby this Court directed to take decision regarding premature release of the petitioner positively, otherwise action as per law would be initiated, the aforesaid order in the meeting dated 14.02.2023 was passed.

A bare perusal of the reply by learned State counsel reveals that the matter would be now placed before the Council of Ministers for their approval and then it would be sent to the Governor of Punjab for final decision.

Learned counsel for the petitioner further submits that in similar case in COCP-2020-2022, titled as Pawan Kumar vs. D. K. Tiwari

and another, decided on 30.01.2023, the petitioner was released on interim

bail. It was further submitted that since the case of the petitioner is covered by the aforesaid case, he be also released on interim bail till the decision regarding his premature release.

Learned State counsel has very fairly conceded that case of the petitioner is also covered by the aforesaid case for premature release and the decision in the case of the petitioner would be taken promptly.

Heard.

The case of the petitioner is covered for premature release. Despite specific directions issued on 19.05.2022, the State failed to take decision within two months. Then, the instant petition was filed. Still the matter is hanging and it will take quite sufficient time. Till final decision is taken by the Government on premature release, the petitioner is directed to be released on bail, on his furnishing bail bonds/surety bonds, to the satisfaction of learned Chief Judicial Magistrate/Duty Magistrate, Sri Muktsar Sahib, subject to the following conditions :-

- (a) **that** in case, his claim is rejected by the competent Authority, he shall immediately surrender back to the concerned Jail to undergo further imprisonment;
- (b) **that** an undertaking shall be given by a family member of the petitioner that in the event of premature release case of the petitioner is rejected by the Government, he shall immediately surrender back to the concerned Jail to undergo further imprisonment;
- (c) **that** the Passport of the petitioner, if

any, till the time final decision is taken by the competent authority, will remain deposited with the local police where FIR was registered or with the Court and he will not be permitted to travel abroad without the prior permission of the Chief Judicial Magistrate concerned;

(d) **that** since the convict is resident of Haryana, the concerned Chief Judicial Magistrate may, in his discretion, ask for an undertaking of a respectable like Sarpanch or Lamberdar or any other permanent resident of that area that till the time a final decision is taken, the convict will stay at his given native address and will immediately surrender back, if required.

The petition stands disposed of accordingly.

However, nothing contained herein above shall be construed as an expression of opinion on the merits of the case.

February 20, 2023
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.