

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-1340-2019

Date of Decision: May 05, 2023

Balbir Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. D.N. Ganeriwala, Advocate for the petitioner.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.

By way of this criminal writ petition filed under Articles 226/227 of the Constitution of India to be read with Section 482 Cr.P.C., petitioner has prayed for issuance of writ of certiorari for quashing the order dated 17.08.2017 (Annexure P-3) passed by the Additional Chief Secretary, Government of Haryana, Jails Department, Chandigarh, rejecting the case of the petitioner for pre-mature release on the ground that the petitioner is still danger to public safety.

2. Petitioner had committed double murders of Jagir Singh and Sukhdev Singh by firing shots with his .12 bore licensed gun on 16.12.1999, regarding which FIR No.796 dated 16.12.1999 was registered at Police Station City Sirsa under Sections 302 IPC and Section 27 of the Arms Act, 1959. After holding trial, he was convicted and sentenced under Section 302 IPC for life imprisonment by the learned Sessions Judge, Sirsa on 03.09.2002. The appeal filed by him has already been dismissed by this Court.

3. According to the petitioner, he had already undergone actual sentence of more than 10 years and total sentence of more than 14 years including remission (at the time of filing this petition in October, 2017) and so, his case is covered by pre-mature release Policy dated 12.04.2002 (Annexure P-2). According to the petitioner, his case does not fall in category of para 2(aa) and 2(a) of the Policy and rather, his case is covered by para 2 (b) of the Policy. The case of the petitioner for pre-mature release was considered by the State level Committee on 04.07.2017, but the same has been rejected on the ground that his case is covered under para 2(a)(xii) of the Policy. Petitioner submits that no specific reasons have been given as to how he is danger to the public safety. Petitioner has maintained good conduct in the jail while undergoing sentence, which is evident from the fact that he was released on parole and furlough for 31 times and he surrendered before the jail authorities in time. Conviction of the petitioner in a case under the provisions of NDPS Act has been cited as a reason for rejecting the case of the petitioner, regarding which petitioner contends that commission of said jail offence is not legal or valid ground to reject his case for grant of pre-mature release.

4. As per the reply filed by the respondents, his conduct has not been found satisfactory after conviction, inasmuch as he misused the concession of furlough, as on his return from furlough on 18.07.2012, he was found in possession of 85 grams of opium by the jail authorities at the entrance of the jail, regarding which FIR No.524 dated 18.07.2012 was registered at Police Station City Sirsa, under Sections 17/18 of the NDPS

Act, 1985 and Section 42 of the Prisons Act. Petitioner was convicted in that case and was sentenced to undergo rigorous imprisonment for a period of 1 year and 6 months, whereas jail punishment of “said furlough period shall not be counted towards his sentence” was awarded to the petitioner by the Superintendent, District Jail, Sirsa. Respondents further submit that the case of the petitioner is also hit by Section 433-A of Cr.P.C., as he has to undergo minimum sentence of 14 years of actual sentence in jail. Besides, petitioner cannot claim pre-mature release as a matter of right, as it is the sole discretion of the Government to exercise power in accordance with law.

5. Heard. Paper book perused.
6. As noted above, this petition was filed way back in October, 2017. With the passage of time, the custody period of the petitioner has increased. As per the custody certificate dated 01.05.2023 placed on record by learned State counsel, the details of custody period of the petitioner in this case are as under: -

Particulars	Period of Custody		
	Years	Months	days
Custody as undertrial	02	05	17
Custody after conviction	15	02	08
Parole availed	03	08	12
Actual custody after conviction	11	05	26
Actual undergone period including custody as undertrial	13	11	13
Earned remission	06	04	03
Total sentence including remission	20	03	16
Custody served after deduction of undertrial period served during conviction in other cases	20	03	16

In the aforesaid custody certificate, there is also reference of various cases,

in which petitioner is the undertrial. Besides, he has also been convicted in one case registered under the provisions of NDPS Act.

7. As per the Policy regarding pre-mature release of life convicts issued by the State of Haryana vide memo No.36/135/91 1JJ(II) dated 12.04.2002 of the Financial Commissioner and Principal Secretary to Government, Haryana Jails Department (Annexure R-1), various convicts have been divided in different categories, whose cases are to be decided by the Government regarding pre-mature release, depending upon the sentence already undergone by them. The cases for pre-mature release are reviewed by the State level Committee.

8. Petitioner claims to be falling in the category 2(b), which reads as under:

2(b)	Adult life convicts who have been imprisoned for life but whose cases are not covered under (aa) & (a) above and who have committed crime which are not considered heinous as mentioned in clause(aa) & (a) above.	Their case may be considered after completion 10 years actual sentence including undertrial period provided that the total period of such sentence including remission is not less than 14 years.
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9. On the other hand, as per respondents, the case of the petitioner falls under category 2(a)(xii), which is as under: -

2(a) (xii)	Convicts who cannot for some definite reasons be prematurely released without danger to public safety.	Their cases may be considered after completion of 14 years actual sentence including undertrial period
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		provided of such sentence including remission is not less than 20 years
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10. In the present case, the impugned order dated 17.08.2017 (Annexure P-3) reveals that State level Committee took into consideration the fact that when the petitioner returned from furlough on 18.07.2012, 85 grams of opium was recovered from him and case FIR No.524 dated 18.07.2012 under Sections 17/18 and 42 of Prisons Act was registered against him, in which he has been convicted and sentenced to undergo rigorous imprisonment for a period of 1 year and 6 months. Considering the fact that said offence was committed by the petitioner during his conviction period and when he returned from furlough, the respondents cannot be stated to be at fault in considering him to be danger to the public safety and as such, petitioner cannot claim to be falling in category 2 (b) of the Policy.

11. However, with the passage of time, the case of the petitioner can be now considered even in category 2(a)(xii) of the Policy. In this regard, learned counsel for the petitioner has rightly urged that in the custody certificate dated 01.05.2023, actual custody period after conviction has been wrongly calculated to be 11 years, 05 months and 26 days by not including the parole period and that after including the parole period, the actual custody period after conviction works out to be 15 years, 02 months and 08 days. Learned counsel has referred to the judgment of *“Faqr Singh v. State of Punjab and Ors.”* MANU/PH/0207/1987, wherein it was held by

this Court that the time spent on parole by a prisoner could legitimately be included in the period of imprisonment undergone by him and as such it has to be so considered while deciding the pre-mature release case, although in view of Section 3(3) of the Punjab Good Conduct Prisoners (Temporary Release) Act, the period spent by the petitioner on parole cannot be counted towards the total period of sentence of imprisonment. The view taken by this High Court in **Faqir Singh's case** (*supra*) is also mentioned in the Policy dated 12.04.2002 (Annexure P-2) clearly stating therein that the period spent on parole will be counted towards the period of actual sentence, though it has to be excluded from the total period of sentence.

12. Once it is so and the period of parole availed by the petitioner is taken into consideration in this case, his actual custody period after conviction works out to be 15 years, 02 months and 08 days, i.e., more than 14 years.

13. In view of above, this petition is hereby disposed of with direction to the respondents to re-consider the case of the petitioner for his pre-mature release by taking into account the Policy dated 12.04.2002 (Annexure P-2) and by taking into consideration the sentence, which has now been undergone by the petitioners, keeping in view the observations made in this order.

May 05, 2023
sarita

(DEEPAK GUPTA)
JUDGE

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