

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

212

CWP-1739-2019
Date of Decision: 06.03.2024

JAI KRISHAN

... Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Ran Vijay Singh, Advocate
for the petitioner.

Ms. Niharika Sharma, AAG, Punjab
for respondents No.1 to 3.

Ms. Jasleen Kaur Chhiber, Advocate
Legal Aid Counsel for respondent No.4
(already *ex-parte* vide order dated 01.02.2023).

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 07.08.2018 (Annexure P-14) and 23.08.2018 (Annexure P-15) passed by the respondent-State of Punjab, whereby respondent No.4 –Narender Kumar @ Nindi has been released prematurely while granting remission after a period of 10 years 06 months and 08 days against the spirit of Policy No.2/183/89-1H-7/1126030/1 dated 14.12.2017.

Since respondent No.7- Narinder Singh @ Nindi had been proceeded against *ex parte*, this Court deemed it appropriate to nominate a legal aid counsel to represent the case of respondent No.4. Accordingly, Ms. Jasleen Kaur, Advocate (Enroll No.P/3041/2023, M.No.94787-85135), who is present in Court, is nominated as Legal Aid Counsel on behalf of respondent No.4. She

has gone through the paper book as facilitated to her by the counsel for the petitioner and has offered her assistance on behalf of the said respondent. Copy of this order be also sent to the High Court Legal Services Committee, Chandigarh for appropriate action and for reimbursement in terms of the applicable policy.

The arguments advanced by the counsel for the petitioner is to the effect that respondent No.4 had been convicted and sentenced in relation to case FIR No.140 dated 28.11.2005 registered under Sections 302, 307 read with Section 34 of IPC, 1860 and Sections 25 & 27 of the Arms act, 1959 at Police Station Julka, Patiala for committing murder of Amandeep Kumar aged 27 years, son of the petitioner. He contends that the said respondent is influential person and had been manipulating the system to his advantage despite having been prosecuted for commission of jail offence, for which an FIR No.351 dated 11.11.2016 was registered under Section 52(1) of the Prison Act at Police Station Tripur, Patiala. He has further contended that the respondent No.4 submitted a request for premature release in January, 2018 on the ground that his mother and children are all alone in the family whereupon, respondent No.3 recommended the case of respondent No.4 alongwith the details of the custody period notwithstanding that respondent No.4 had undergone only a period of 09 years, 10 months and 27 days against the mandatory period of 14 years required for actual substantive period in order to be considered for premature release. He further contends that as per the information received under Right to Information Act, 2005, the case of respondent No.4 for seeking premature release was considered on completion of actual sentence of 10 years 06 months and 08 days including the parole/furlough etc. and that in the event the period is excluded,

respondent No.4 would not fulfill the mandatory requirements of the policy as notified by the State of Punjab.

Reply on behalf of respondents No.1 and 3 had been filed by way of an affidavit dated 10.04.2019 of Gurcharan Singh Dhaliwal, Deputy Superintendent of Police, Central Jail, Patiala, wherein it is stated that the case of respondent No.4 had been initiated for premature release as per the policy dated 14.12.2017 and as per the instructions, the said case has to be initiated at least six months prior in point of time to the date when a person becomes eligible for such release. The case of respondent No.4 was sent to the Government stating the necessary facts for facilitating the Government-Competent Authority to take a decision. An order dated 10.08.2018 was thereafter passed by the Addl. Chief Secretary, Government of Punjab under Article 161 of the Constitution of India. It is further stated that the case of respondent No.4 was considered on the basis of the directions issued by this Court in CWP No.1054 of 2017 and that as per the said Policy, a convict has to undergo 10/14 years for being eligible for premature release. The case of respondent No.4 was initiated for seeking recommendations of the Deputy Commissioner/Senior Superintendent of Police on 22.01.2018 when he had undergone actual custody of 09 years,10 months and 27 days and that after consideration of the recommendations of the Deputy Commissioner/Senior Superintendent of Police, the matter was forwarded to the office of Additional Director General of Police on 18.04.2018 and at that time, the convict had already undergone a period of 10 years and 12 days of actual sentence and a total sentence of 16 years 05 months and 22 days including the period of remissions and parole, excluding parole. Hence, the statutory requirement of 10

years of actual and 14 years of total sentence had already been fulfilled by respondent No.4 and as such, the power was exercised for premature release of respondent No.4.

The Legal Aid Counsel appearing on behalf of respondent No.4 contends that the present petition had been filed on the basis of information that had been sought under Right to Information Act, 2005 and that the said information was incomplete. The affidavit has already been filed by the respondent-State in the year 2019 as per which respondent No.4 had completed the requisites as stipulated in the Policy issued by the State of Punjab. There was thus no illegality or impropriety in passing of the said order and that the case of the petitioner fell squarely within the parameters prescribed by the said policy. She further contends that even though the aforesaid reply was filed on 10.04.2019, however, no replication/rejoinder has been filed controverting the abovesaid factual aspect brought before this Court by way of an affidavit filed by Deputy Superintendent of Police, Central Jail, Patiala.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

It is not in dispute that the specific stand adopted by the respondents as regards the respondent No.4 duly fulfilling the conditions/requirements prescribed in the policy for premature release notified by the State of Punjab and that he had undergone an actual sentence of more than 10 years and a total sentence of more than 14 years as per the statutory requirements. Hence, there is no reason for this Court to form an opinion that respondent No.4

did not fulfill the pre-requisites for being considered and given benefit of premature release.

The present petition is accordingly dismissed at this stage.

MARCH 06, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

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