

2024:PHHC:128851



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRWP-796-2024 (O&M)

Reserved on: 06.09.2024

Date of Pronouncement: 27.09.2024

RUPINDER SINGH

.....Petitioner(s)

*VERSUS*

STATE OF PUNJAB AND OTHERS

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Manish Verma, Advocate,  
for the petitioner(s).

Mr. Raghav Garg, AAG, Punjab.

**KULDEEP TIWARI, J.**

1. Through the instant petition filed under Article 226 of the Constitution of India, challenge is thrown to the impugned order dated 02.01.2024 (Annexure P-4), whereby respondent no.3 has rejected the premature release case of the present petitioner.

2. The sole issue which has been raised and requires consideration, is that, “whether, the parole period can be counted towards the actual sentence?”

3. In the instant case, the petitioner was convicted by the learned Sessions Judge, Gurdaspur, vide judgment dated 19.04.2003, in case FIR No.129, dated 05.11.2000, registered under Sections 148/302/307/324 /323/149 IPC and under Section 27/29 of the Arms Act,

at Sri Hargobindpur, and sentenced him to undergo RI for life with fine of Rs.5,000/-and in default of payment of fine to further undergo RI for a period of 01 year under Section 302 IPC, and to undergo RI for a period of 02 years without fine under Section 324 IPC, and to undergo RI for a period of 01 year without fine under Section 323 IPC, and to undergo RI for a period of 05 years with fine of Rs.1000/- in default of payment of fine, and further RI for a period of 01 year under Section 27 of the Arms Act.

4. The petitioner remained unsuccessful in his attempt to challenge the above verdict of conviction and sentence, by filing a statutory appeal, as same was dismissed vide judgment dated 12.03.2018.

5. Thereafter, the petitioner filed an application for grant of premature release, which was declined vide impugned order dated 01.01.2024 (Annexure P-4), on the ground that the petitioner has not completed the actual sentence as per the Punjab Government's Policy of Premature Release dated 08.07.1991 (hereinafter referred to as “the Policy of 1991”). As per the the impugned order (*supra*), it was further observed that case of the petitioner can only be considered if he has completed 10 years of actual imprisonment, and 14 years of total sentence (which includes remissions period).

#### **SUBMISSIONS MADE BY LEARNED COUNSEL FOR THE PETITIONER**

6. Learned counsel for the petitioner while throwing challenge to the impugned order (*supra*) submits that infact, the petitioner has completed 10 years of actual sentence, whereas, the authority concerned

has deducted the period of parole from the actual sentence, which is against the provisions of Section 3(3) of the Punjab Good Conduct Prisoner's (Temporary) Release Act, 1962 (hereinafter referred to as "the Act of 1962").

7. He further submits that the petitioner was convicted on 19.04.2003, therefore, the Policy of 1991, would be applicable in the case of the present petitioner, and his case is covered under Column (C) of Paragraph 1.1 of the *ibid* Policy, wherein, the requirement is to undergo 10 years of actual sentence, and 14 years of total sentence. Thus, the petitioner has undergone more than the required period of premature release, therefore, he is entitled to be released from the custody.

#### **SUBMISSIONS MADE BY LEARNED STATE COUNSEL**

8. The submissions made by learned counsel for the petitioner has been opposed by learned State counsel. While placing reliance on Section 3(3) of the the Act of 1962, learned State counsel submits that the period of parole cannot be counted towards the actual sentence of the petitioner, therefore, the impugned order (*supra*) has rightly been passed.

9. He further submits that a State Level Committee, has already been formed, under the Chairmanship of Principal Secretary, Jails (Punjab), Chandigarh, vide order dated 16.03.2020, has carved out a formula for counting the actual sentence which reads as under:-

**“Custody during trial period+Conviction period-parole = Actual sentence.”**

10. While referring to the custody certificate *qua* the petitioner, he also submits that the petitioner has undergone the actual sentence of 9

years 2 months and 2 days as on today, and he earned remissions of 6 years 6 months. Thus his total sentence including remissions comes out to be 15 years 08 months 2 days. Therefore, the case of the petitioner is not covered under the Policy of 1991, as the requirement to undergo 10 years of actual sentence, has not been met.

11. Learned State counsel further placed reliance upon a judgment by the Hon'ble Supreme Court in “**Rohan Dhungat etc. vs. The State of Goa and others etc.**” Law Finder Doc Id #2101239, to submit that the parole is not to be included in the actual imprisonment.

The relevant extract of the said judgment, reads as under:-

“10. If the submission on behalf of the prisoners that the period of parole is to be included while considering 14 years of actual imprisonment is accepted, in that case, any prisoner who may be influential may get the parole for number of times as there is no restrictions and it can be granted number of times and if the submission on behalf of the prisoners is accepted, it may defeat the very object and purpose of actual imprisonment. We are of the firm view that for the purpose of considering actual imprisonment, the period of parole is to be excluded. We are in complete agreement with the view taken by the High Court holding so.”

## ANALYSIS

12. Before embarking upon the submissions made by learned counsel for the parties, let us examine Section 3(3) of the Act of 1962, which extracted hereinafter:-

“3(3) The period of release under this Section shall not count towards the total period of the sentence of a prisoner.”

13. The study survey of the above extracted provision reflects that the total period of parole cannot be counted towards the **total period**

**of sentence**, however, no restriction is imposed for counting the release period towards the actual sentence.

14. To make it more clear, Section 3(3) of the Act of 1962, imposes restriction for not counting the total release period towards the total period of sentence (which includes remissions). However, the period of parole availed by the petitioner is required to be counted towards actual sentence.

15. Further, this Court finds strength from a judgement passed by the Hon'ble Supreme Court in **“Avtar Singh vs. State of Haryana and another” Law Finder Doc Id# 10058**, wherein, this issue was examined by the Supreme Court, wherein, the petitioner filed an application to include the parole period in the total period of imprisonment undergone by him was, declined by the authority concerned, and that issue was considered in the light of provisions of Section 3(3) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, which is *paramateria* to the Act of 1962, and held that ordinary period of temporary release of a prisoner on parole needs to be counted towards the total period of detention, but this condition can be curtailed by legislative act, rules, instructions, or terms of grant of parole. The relevant extract of the said judgment reads as under:-

“12. Thus, the Constitution Bench by majority decision clearly held that the period of temporary release of a prisoner on parole is to be counted towards the total period of detention, unless it is otherwise provided by legislative act, rules, instructions or terms of the grant of parole.

14. Thus, the legislature for the purpose of temporary release has created two classes of prisoners. If we compare these two sections, we find that conditions of temporary release on furlough under Section 4 is more rigorous and a prisoner shall not be entitled to such temporary release unless he fulfills the conditions laid down in the

said section. But in Section 3 no such rigorous condition has been imposed and only the circumstances under which the temporary release can be granted have been stated. Moreover certain classes of prisoners cannot get the benefit of furlough.

18. The second contention of the learned counsel for the appellant has also to be rejected in view of the decision of this Court in *Sunil Fulchand Shah (supra)*. The Constitution Bench has clearly held that though ordinarily the period of temporary release of a prisoner on parole needs to be counted towards the total period of detention but this condition can be curtailed by legislative act, rules, instructions or terms of grant of parole.

19. We also do not find force in the contention of the learned counsel for the appellant that sub-section (3) of Section 3 of the Act is hit by Article 21 of the Constitution. By a valid legislative act the period of temporary release on parole has been denied while counting the actual sentence undergone by the prisoner. It cannot be said that such right of a prisoner has been taken away without due process of law. Consequently, these contentions of the learned counsel for the appellant are rejected.”

16. In the instant case, the legislative Act, has specifically curtailed the right of the prisoner for, to count the period of parole towards the total sentence. However, this Act does not curtail the right of a prisoner for counting the period of parole availed towards the actual sentence.

17. This Court has also considered the judgment cited by the learned State counsel in **Rohan Dhungat's** case (*supra*), however, it is not applicable to the present matter. That observation was passed by the Hon'ble Supreme Court while considering the provisions Goa Prisons Rules, 2006. However, the instant issue is required to be considered in the pervue of the Act of 1962, therefore, the preposition laid down by the Supreme Court in **Rohan Dhungat's** case (*supra*) is not applicable to the present case.

18. The above opinion also finds vigor from the observation made by a co-ordinate bench of this Court in “**Inderjit Singh alias Lada vs. State of Punjab and others**” (CWP-260-2023, decided on

02.07.2024), wherein the same legal preposition has been laid down after considering the judgment passed by the Hon'ble Supreme Court in **Avtar Singh's** case (*supra*), and held that for grant of premature release, the period of parole availed by an accused must be counted towards his actual sentence but must be deducted from his total sentence (which includes remissions). The relevant extract thereof reads as under:-

“15. The primary issue that arises in the instant case is as to whether the period of parole is to be counted towards actual sentence or whether it is to be excluded while considering the case of a convict for the grant of premature release. In Maru Ram (*supra*) the vires of Section 433A of the Act was challenged and in those proceedings, it was categorically held that parole was to be counted towards actual imprisonment. The said judgment was thereafter, followed in a number of decisions of this Court, some of which have been quoted above. Meanwhile, in the case of Avtar Singh (*supra*) the challenge was to the validity of Section 3(3) of the Haryana Good Conduct Prisoner (Temporary Release) Act, 1988 and whether the provision was hit by Article 21. The Hon'ble Supreme Court held that Section 3(3) of the Act was not hit by Article 21 and by a valid legislative Act, the period of temporary release on parole had been denied/deducted while counting the actual sentence undergone by the prisoner. Interestingly, the judgment in Maru Ram (*supra*) was never considered and dealt with in Avtar Singh (*supra*). However, a perusal of Section 3(3) of the Act reads that the period of release under this Section would not count towards the total period of the sentence of imprisonment of prisoner. But, in para 19 the Court has held that by a valid legislative act, the period of temporary release on parole has been denied while counting the actual sentence undergone by the prisoner. Thus, there seems to be some confusion with the judgment in Avtar Singh (*supra*) as to whether as per Section 3(3) of the Punjab Good Conduct Prisoners (Temporary) Release Act, 1962, the period of parole availed is to be deducted from the actual imprisonment undergone or from the total actual sentence including remissions. Be that as it may, the subsequent judgments in Rohan Dhungat and Anil Kumar (*supra*) have followed Avtar Singh (*supra*) without even a passing reference to Maru Ram (*supra*).

16. The law regarding the rule of precedent and per incuriam is quite clear. A decision or a judgment can be per incuriam any provision in a statute, policy, rule or regulation which was not brought to the notice of the Court. A decision or a judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a coequal or a Larger Bench. In case, there are two or more mutually irreconcilable decisions of the Supreme Court and the later one is without considering the former, the earlier view is to be applied as the succeeding one would fall in the category of per incuriam. **Therefore, in the instant case for the grant of premature release, the period of parole availed**

by an accused must be counted towards his actual sentence but must be deducted from his total sentence (which includes remissions)."

(emphasis upon)

19. This Court has considered the decision taken by the State Level Committee on dated 16.03.2020, for adopting the method of counting actual sentence which permits the deduction of parole period from actual sentence. However, this decision is infact totally in contradiction to Rule 3(3) of the Act of 1962, therefore, the administrative instructions dated 16.03.2020 (*supra*), cannot supersede the statutory provision of law. Furthermore, these administrative instructions cannot be made applicable retrospectively. It is a trite law that for considering the case of premature release, the policy which is in vogue on the date of conviction is to be considered, not the policy which is in vogue on the date of consideration of the application, subject to more beneficial terms are provided in the subsequent policy.

#### **FINAL ORDER**

20. *Insuma*, the instant petition is **allowed**, and the impugned order dated 02.01.2024, is hereby **set aside**, and the issue is remanded back to the competent authority concerned, to reconsider the case of the present petitioner.

21. In view of the aforesaid observations the State Government is directed to consider the parole period while counting towards actual sentence of the petitioner. However, the same must not be counted towards total sentence (which includes remissions).

22. In case the petitioner is found eligible in apt policy, a fresh decision be taken by passing a speaking order. However, this exercise shall be carried out within a period of two months from today.

23. All pending application(s), if any, stand **disposed** of accordingly.

September 27, 2024  
*dharamvir*

(KULDEEP TIWARI)  
JUDGE

|                            |   |        |
|----------------------------|---|--------|
| Whether speaking/reasoned. | : | Yes/No |
| Whether Reportable.        | : | Yes/No |