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

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CRWP-1348-2022 (O&M)
Date of decision : 12.09.2024

Gurpreet Singh and another**...Petitioners****Versus****State of Punjab and others****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Sandeep Verma, Advocate
For the petitioners.

Mr. A. S. Samra, AAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed by the petitioners under Article 226 of the Constitution of India seeking issuance of a writ in the nature of certiorari for setting aside the order dated 11.04.2019 (Annexure P-2), passed by respondent No. 2-Additional Director General of Prisons, Punjab, whereby the case of the petitioners for their premature release had been rejected on the ground that at the time of passing the judgment of conviction and order on quantum of sentence, the sentences so awarded to the petitioners were not ordered to run concurrently by the trial Court.

2. In nutshell, the case of the petitioners is that they had been booked in a case arising out of FIR No. 125 dated 02.06.2006, registered under Section 302 of IPC at Police Station Kot Bhai. They were arrested and faced trial and were held guilty and convicted by the Court of learned Additional Sessions Judge, Sri Muktsar Sahib, vide judgment dated 25.08.2009 and were sentenced to undergo life imprisonment and to pay fine of Rs. 10,000/-. In default of payment of fine, they were to further undergo

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rigorous imprisonment for a period of one year. In addition thereto, they were also held guilty and convicted under Sections 326 and 325 of IPC. Imprisonment of 03 years and 02 years, respectively, for commission of offences under these offences had also been awarded to them, apart from making payment of fine with default clause. The petitioners filed an appeal before this Court, bearing ***CRA-D-953-DB-2009***, which was dismissed, vide judgment dated 03.10.2013.

3. It is submitted by learned counsel for the petitioners that they have undergone a period of more than 13 years in custody. Their conduct has remained good. They did not commit any jail offence during the above mentioned period. The period of their custody along with remissions has crossed a term of 20 years as they have been granted remissions for a period of more than 07 years. It is further submitted that under the policy dated 08.07.1991, the petitioners were entitled for grant of premature release on expiry of a period of 10 years of actual sentence, which has already been undergone by them. Their case for grant of premature release was, however, not recommended by the respondent No. 3 under the policy dated 08.07.1991. Rather, the same was recommended under the policy of the year 2017, as per which, a period of incarceration of a life convict was 12 years of actual sentence. The petitioners, while submitting that since at the time of their conviction, the policy dated 08.07.1991 was applicable, therefore, their case could not be recommended under the policy instructions dated 14.12.2017, have made prayer for directing the respondents to release them prematurely in terms of policy dated 08.07.1991.

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4. It is also the case of the petitioners that the trial Court, while holding them guilty for commission of aforementioned offences, had not passed any order for concurrent running of the sentences. It is submitted that in view of the provisions of Sections 31 and 427 of Cr.P.C., all the sentences awarded to the petitioners should be considered to be running concurrently even in the absence of any specific order being passed by the trial Court in this regard. Therefore, prayer has been made for setting aside the order dated 11.04.2019, passed by respondent No. 2, whereby the case of the petitioners for premature release had also been rejected on the ground that at the time of holding them guilty and convicting for commission of aforementioned offences, the sentences awarded to them were not ordered to run concurrently. Learned counsel for the petitioners has relied upon ***Muthuramalingam and others vs. State Rep. By Inspector of Police : 2016 (3) RCR (Criminal) 827*** and ***State of Haryana vs. Jagdish, 2010 (4) SCC 216*** and has argued that the petition filed by the petitioners deserves to be allowed and they deserve to be prematurely released.

5. The respondents have filed joint status report confirming the fact that both the petitioners were held guilty and convicted for commission of aforementioned offences. It is also submitted that petitioner No. 1 had undergone total sentence of 13 years, 06 months and 05 days, whereas petitioner No. 2 had undergone total sentence of 13 years, 09 months and 20 days. It was further submitted that they had completed 03 years of sentence under Section 326 of IPC read with Section 34 of IPC and 02 years of sentence under Section 325 of IPC read with Section 34 of IPC and were undergoing life sentence as awarded to them under Section 302 of IPC, at the

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time of filing of reply. Their sentences were not ordered to run concurrently and, therefore, the same were presumed to run consecutively. It is also submitted that the case of the petitioners for premature release was forwarded for consideration before the competent authority under the policy dated 08.07.1991 and not under the policy dated 14.12.2017. While asserting that since the sentences of the petitioners were to run consecutively, therefore, the period of their incarceration was considered as the period of sentences awarded under Sections 326 and 325 of IPC read with Section 34 of IPC and as the period of sentence of life imprisonment has not been completed, therefore, their claim for premature release could not be accepted. While submitting that no illegality had been committed by the respondents by declining the prayer made by the petitioners, dismissal of this petition is prayed for.

6. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

7. Annexure P-1 is copy of policy issued by the Department of Home Affairs and Justice, Govt. of Punjab on 08.07.1991, as per which, the convicts, who have been imprisoned for life for offences for which death is a penalty but crimes are not considered heinous, are required to undergo actual imprisonment for a period of 10 years and imprisonment with remissions for a period of 14 years for their premature release. It is well settled proposition of law that policy, which makes a provision for remissions of sentence, should be that which was existing on the date of conviction of the accused. Reliance in this regard can be placed upon *Jagdish*'s case (supra), wherein the question of law as raised by Hon'ble Supreme Court was that as to whether a policy,

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which makes a provision for remission of sentence should be that which was existing on the date of conviction of the accused or it should be the policy that exists on the date of consideration of his case for premature release by the appropriate authorities? Hon'ble Supreme Court, after considering the relevant rules and law, came up with a direction that all the premature release policies, which are applicable at the time of conviction, are to be applied uniformly between jail inmates in order to avoid charge of discrimination and policies of premature release, which have been passed after the date of conviction cannot be applied retrospectively to the life convicts. In view of the afore-discussed position of law, it is clear that for the purpose of grant of premature release, the case of the petitioners is required to be considered in terms of policy dated 08.07.1991, which was prevalent at the time when they were held guilty and convicted and not under the policy pertaining to the year 2017. However, since this position has been admitted by the respondents in their reply and it is asserted by them that they had considered the case of the petitioners in terms of policy dated 08.07.1991 and as the petitioners had not been able to show that their case for premature release was considered in terms of policy dated 14.12.2017, therefore, no direction is required to be issued in this regard as prayed for by the petitioners.

8. Now the next question that arises for consideration before this Court is as to whether the petitioners were entitled to be extended benefit of premature release keeping in view the fact that both of them have undergone more than 13 years of actual incarceration? It is not in dispute that the petitioners were convicted and sentenced under Sections 302, 325 and 326 of IPC read with Section 34 of IPC and separate sentences have been awarded to

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them. It is also not in dispute that the trial Court did not pass any order for concurrent running of the sentences so awarded. As such, it is to be considered as to whether the sentences so awarded to the petitioners could be considered to be running consecutively? Section 31 of Cr.P.C. is relevant for the purpose, which reads as under:

“31. Sentence in cases of conviction of several offences at one trial.

(1) When a person is convicted at one trial of two or more offences, the Court may subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court :Provided that –

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him

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under this section shall be deemed to be a single sentence.”

9. According to the petitioners, even in the absence of a specific order with regard to concurrent running of their sentences, the sentences awarded to them are to be presumed to have been running concurrently by operation of Section 31(1) of Cr.P.C.. In this context, learned counsel for the petitioners has relied upon *Muthuramalingam*’s case (supra), wherein a three Judges Bench of Hon’ble Supreme Court had referred the following question to the Constitution Bench for consideration:

“Whether consecutive life sentences can be awarded to a convict on being found guilty of a series of murders for which he has been tried in a single trial?”

10. The Constitution Bench of Hon’ble Supreme Court had discussed the provisions of Section 31 of Cr.P.C. in detail and observed that the Court at jurisdiction can order that sentences should run concurrently or consecutively. The Court can also legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. However, life sentence cannot start first if there is no order of concurrent sentences. It observed that this was so because once direction is given for the life sentence to start first, it would necessarily imply that the term sentence would run concurrently and there would be no question of the prisoners undergoing further sentences. Hon’ble Supreme Court further observed that provisions of Section 31(1) of Cr.P.C. on interpretation meant that sentences awarded by the Court for several offences include imprisonment for life which can and must run concurrently. If more than one life sentences are awarded to the prisoner, the same would get super imposed over each other. This will imply that in

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case the prisoner is granted the benefit of any remission or commutation qua one such sentence, the benefit of such remission would not ipso facto extend to the other. Hon'ble Supreme Court, however, did not consider the question that if a term sentence and life sentence were not ordered to run concurrently, then they were to be presumed to be running consecutively or not ? This question had been considered by this Court in **CWP-7277-2018**, titled as ***Ranjit Singh vs. State of Punjab and others***, decided on 03.12.2018, wherein the convict had been sentenced under Sections 302 and 364 of IPC read with Section 34 of IPC. Sentence of 07 years was awarded under Section 364 of IPC, whereas under Section 302 of IPC, he was awarded life imprisonment. No order for concurrent running of the sentences had been passed by the trial Court. It was observed by this Court that in the absence of any specific order being passed by the convicting Court with regard to concurrent running of the sentences, the same were to run consecutively. A distinction was drawn with the observations made by Hon'ble Supreme Court in ***Muthuramalingam's*** case (supra), by observing that the view taken in that case was to the effect that if the life imprisonment was ordered to run firstly, then the term sentence(s) will run concurrently for the apparent reason that once one had spent life in jail, there was no question of undergoing any further sentence. Similar is the position in the instant case as no order had been passed by the trial Court qua concurrent running of the sentences. Even in the appeal, filed by the petitioners before this Court, no prayer had been made by them for passing an order for concurrent running of the sentences awarded to them.

11. Section 31 of Cr.P.C. permits consecutive running of sentences, if an offender is awarded life imprisonment and also term imprisonment but in

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that case, the prisoner shall first undergo terms sentences before the commencement of his life sentence and this is what has exactly happened in this case, since respondent No. 2, by considering the fact that the sentences were to run consecutively, firstly counted the period of term sentences as awarded to the petitioners and after completion of period of those sentences, the life sentence has started, which admittedly had not completed the requisite period of 10 years, as per policy dated 08.07.1991. Therefore, no illegality can be said to have been committed by the respondent No. 2 while passing the impugned order dated 11.04.2019.

12. In view of the discussion as made above, it is held that the present petition does not deserve to be allowed. Accordingly, the same is dismissed. However, a direction is issued to the respondent-authorities that whenever the petitioners fulfill the criteria laid down in the policy dated 08.07.1991, their case for premature release shall be put up before the competent authority for consideration for their premature release.

12.09.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes