

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-1430-2023

Reserved on: January 15, 2024

Pronounced on: January 19, 2024

Rajbir Singh

...Petitioner

Versus

State of U.T. Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. Abhishek Jindal, Advocate for the petitioner.

Mr. Deepinder Brar, Addl. P.P. for U.T., Chandigarh.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 226/227 of the Constitution of India is to issue writ in the nature of certiorari by quashing impugned order dated 10.08.2021 passed by the Principal Secretary Home for Administrator, Union Territory, Chandigarh, whereby case of the petitioner for pre-mature release, as per the Policy dated 08.07.1991 (Annexure P-1) has been rejected. Petitioner further prays for issuance of writ in the nature of mandamus by directing the respondents to release him, as he has already undergone sentence required under the Policy in question.

2. It is undisputed that petitioner was convicted vide judgment of conviction/order of sentence dated 04.05.2005 passed by learned Addl. Sessions Judge, Chandigarh, in a case arising out of FIR No.186 dated

21.09.2001 under Sections 302, 342 and 201/34 of IPC, registered at Police Station Manimajra, Chandigarh and was sentenced to undergo life imprisonment. Appeal against said judgment was dismissed by a Division Bench of this Court vide judgement dated 25.02.2009 (Annexure P-2). Presently, petitioner is confined in Model Jail, Burail, Chandigarh.

3.1 The contention of the petitioner is that as per Policy dated 08.07.1991 (Annexure P-1) issued by the Government of Punjab, Department of Home Affairs and Justice, applicable to U.T., Chandigarh, issued under Article 72/161 of the Constitution of India, he is required to undergo actual sentence of 14 years and total sentence of 20 years by including remission period, whereas petitioner has already undergone the actual sentence of 17 years, 06 months and 23 days and with remission, the total sentence is 25 years, 08 months and 20 days, as per the custody certificate dated 11.01.2023.

3.2 Petitioner's application for premature release was forwarded to the District Magistrate, Hisar, who recommended his release vide order dated 26.04.2017 (Annexure P-3). Said order was referred to learned District and Sessions Judge, U.T., Chandigarh, as per the provisions of Section 432(2) Cr.P.C., who opined that petitioner being aggressive and unsympathetic person, it would be pain to the society to release him and so, his premature release cannot benefit anyone and so he was not entitled for premature release. By relying upon the said opinion of learned District and Sessions Judge, U.T., Chandigarh, the Home Department, Chandigarh

(Administration) declined the application vide order dated 03.10.2017, which was challenged by the petitioner by filing writ petition bearing CWP-10651-2018 (O&M).

3.3 This Court held that merely on the account of the opinion of the District and Sessions Judge concerned, the petitioner's case could not be rejected for premature release, as it was only one of the circumstances to be considered and not binding on the State. As such, order dated 03.10.2017 of the Administrator of Union Territory, Chandigarh was quashed and the respondents-authorities were directed to re-consider the case of the petitioner, vide order dated 17.12.2018 (Annexure P-4) by this Court.

3.4 However, without applying judicious mind and by acting in the mechanical manner and again by solely relying upon the opinion of the District and Sessions Judge, U.T., Chandigarh and ignoring the findings of this Court, the case of the petitioner for premature release was again rejected, vide order dated 29.01.2019 (Annexure P-5), compelling the petitioner to file another writ petition bearing No.CRWP-402-2020. During pendency of this petition, respondents-authorities, in a haphazard manner passed a fresh order dated 10.08.2021, rendering CRWP-402-2020 as infructuous and so, the same was disposed of as such vide order dated 22.09.2021 (Annexure P-6). Petitioner earlier challenged the impugned order dated 10.08.2021 by filing CRWP-3172-2022, which was dismissed as withdrawn vide order dated 18.01.2023 (Annexure P-8).

4. Learned counsel for the petitioner contends that the order dated 10.08.2021 is liable to be quashed, as it has been passed without application of judicious mind and by ignoring the custody period of the petitioner. The relevant factors have not at all been taken into consideration and grave error has been committed by relying upon the opinion of District and Sessions Judge, Chandigarh, by ignoring the earlier order passed by this Court in CWP-10651-2018. Learned counsel contends that the case of the petitioner is squarely covered by the Policy dated 08.07.1991 (Annexure P-1) and so, he is required to be released prematurely.

5. The factual position regarding the custody period is not disputed by the respondents in their reply. However, the stand taken by the respondents is that as per the observations of learned District and Sessions Judge, U.T., Chandigarh, the petitioner brutally killed Ajmer and washed his hands in the toilet seat showing callousness displayed by him and so his release would give pain to the society and so, for this reason, the case of the petitioner for premature release was rejected. Justifying their action and by defending the impugned order dated 10.08.2021, the respondents have prayed for dismissal of the petition.

6. I have considered submissions of both the sides and have perused the record.

7. It is not in dispute that petitioner has been sentenced to undergo imprisonment for life vide judgment and order dated 04.05.2005

passed by learned Addl. Sessions Judge, Chandigarh, in a case arising out of FIR No.186 dated 21.09.2001, under Sections 302, 342 and 201/34 of IPC, registered at Police Station Manimajra, Chandigarh, and that this judgment has attained finality.

8. The Government of Punjab, Department of Home Affairs and Justice framed a policy dated 08.07.1991 for grant of remissions of sentences of life imprisonment under Section 432, 433 and 433(A) of the Cr.P.C. and Article 161 of the Constitution of India. Copy of the said policy is Annexure P1. It is not disputed that said policy is applicable to UT, Chandigarh. As per the said policy, the minimum period of imprisonment to be undergone for a convict before consideration of his application for exercise of powers of the Government under Article 161 of the Constitution of India is as under: -

A		B		C		D		E		
For convicts whose death sentence has been commuted to life imprisonment		Convicts who have been imprisoned for life for offences for which death is a punishment and have committed heinous crime		Convicts who have been imprisoned for life for offences for which death is a penalty but crimes are not considered heinous		Other life convicts imprisoned for life for offences for which the death penalty is not a punishment and have committed heinous crimes		Other life convicts		
Actual imprisonment with re-mission	Imprisonment	Actual imprisonment with re-mission	Imprisonment	Actual imprisonment with re-mission	Imprisonment	Actual imprisonment with re-mission	Imprisonment	Actual imprisonment with re-mission	Imprisonment	
14	20	12	18	10	14	10	14	8 ½	14	

10	14	8	12	8	12	8	12	6	10	
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9. As the policy reveals, the heinous crime is defined as under:-

A. *Heinous crime with reference to column 'B' of 1(1) above are defined as follows: -*

I. *Offence under Section 302 along with 347 of the I.P.G. i.e., murder with wrongful confinement for extortion.*

II. *Section 302 with 375, i.e., murder with rape*

III. *Offence under Section of IPC i.e., dacoity with murder.*

IV. *Offence under Section 302 along with offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987.*

V. *Offence under Section 302 along with offence under Untouchability (offences) Act. 1955.*

VI. *Offence under Section 302 where murder has been committed in connection with any dispute over dowry and this is indicated in the judgement of the Trial Court.*

VII. *Offence under Section 302 where the victims is a child under age of 14 years.*

VIII. *Any conviction under Section 120-B of the L.P.C.*

Heinous Crime with reference to column D' of the revised policy are defined as follows: -

i) *Offence under Section 304 (b) of the IPC, i.e., a dowry death.*

(ii) *Offence under Section 304 along with Section 347 of the IPC, i.e., culpable. homicide with Wrongful confinement for extortion.*

(iii) *Offence under Section 304 with Section 375, i.e.,*

culpable homicide with rape.

(iv) Offence under Section 304 along with offence under the Terrorist and Disruptive Activities (Prevention Act, 1987).

(v) Offence under Section 304 where culpable homicide has been committed in connection with any dispute on dowry and this is indicated in the judgement of the trial court.

(vi) Offence under Section 304 where the victim is a child under the age of 14 years.

(vii) Any conviction under Section 120-B of the IPC i.e., for criminal conspiracy in connection with the above crimes.”

10. As is evident from Clause B & C of the table as mentioned in the policy, as reproduced above, crimes falling in the heinous category have been separated and put in Clause B of the Policy and for such crimes falling in the heinous category, the premature release case is to be considered after completion of 12 years of actual sentence and 18 years of total sentence with remissions. On the other hand, for convicts who have been imprisoned for life, having committed any crime as punishable with death sentence, but crimes are not considered heinous, their cases for premature release are to be considered, as per clause C of the policy as mentioned in the table, on completion on 10 years of actual sentence including under trial period, provided that the total period of such sentence including remission is not less than 14 years.

11. Since Clause B of the Policy specifically provides about heinous crimes, therefore, it can be inferred that crimes falling in clause C of the Policy are not treated to be falling in the heinous category. Further,

no distinction has been made for the convicts, who fall in Clause C of the Policy, on the basis of their attribution in the crime, for which they have been convicted. It will be absolutely arbitrary and discriminatory to chart out a separate category for those convicts, who are convicted for committing murder of their near relatives; or for those convicts, who are not related to the deceased, despite the fact that both the convicts fall in the same category i.e., Clause C of the Policy.

12. In the present case, it is not disputed by the respondents that case of the petitioner falls in Clause C. As per custody certificate dated 15.01.2024 filed by way of affidavit of Addl. Superintendent, Model Jail, Chandigarh, the period of sentence undergone by the petitioner is as under:-

	<i>Years</i>	<i>Months</i>	<i>Days</i>
<i>Actual Sentence</i>	<i>18</i>	<i>03</i>	<i>21</i>
<i>Total sentence by including remission</i>	<i>27</i>	<i>00</i>	<i>06</i>

13. No doubt that a convict has no fundamental right of seeking remission or shortening of sentence as a matter of right and the Government has discretionary power of remission to consider each individual case by keeping in view the relevant factors, but said discretion is to be exercised in a fair and non-discriminatory manner. Once a particular category of convicts have been placed in one category, they cannot be discriminated against themselves.

14 In the present case, a perusal of the impugned order dated 10.08.2021 would reveal that the case of the petitioner for premature

release has been rejected only by taking into consideration the opinion of the District and Sessions Judge, U.T., Chandigarh to the effect that accused-petitioner had brutally killed Ajmer Singh and then washed his head in the toilet seat, showing callousness on his part and that because of this reason his premature release cannot give benefit to anyone.

15. It has already been held by this Court vide order dated 17.12.2018 (Annexure P-4) in CWP-10651-2018 (O&M) that opinion of District and Sessions Judge, U.T., Chandigarh, is only one of the circumstances, which is not binding upon the State to exercise powers under Article 161 of the Constitution of India. Despite the said clear observations of this Court, the respondents-authorities solely relied upon the opinion of District and Sessions Judge, U.T., Chandigarh, by rejecting the premature release case of the petitioner, even by ignoring the long custody period of the petitioner, which is much more than required under the Police (Annexure P-1).

16. It has already been noticed that the case of the petitioner does not fall in the heinous category. Once it is found that the case of the petitioner falls in a particular category (category 'C') in the present case, no discrimination could have been made on the part of the Government.

17. In *Rashidul Jafar @ Chota Vs. State of Uttar Pradesh and another* [Writ Petition (Criminal) No.336 of 2019] decided on 06.09.2022, it has been held by Hon'ble Supreme Court as under: -

“The implementation of the policy for premature release has to be carried out in an objective and transparent manner as otherwise it

would impinge on the constitutional guarantees under Articles 14 and 21. Many of these life convicts who have suffered long years of incarceration have few or no resources. Lack of literacy, education and social support structures impede their right to access legal remedies. Once the state has formulated its policy defining the terms for premature release, due consideration in terms of the policy must be given to all eligible convicts. The constitutional guarantees against arbitrary treatment and of the right to secure life and personal liberty must not be foreclosed by an unfair process of considering applications for premature release in terms of the policy.”

18. In ***Rajkumar Vs. The State of Uttar Pradesh*** [Writ Petition (Criminal) No.36 of 2022], decided on 06.02.2023, it has been observed by Hon’ble Supreme Court as under: -

“The State having formulated Rules and a Standing Policy for deciding cases of premature release, it is bound by its own formulations of law. Since there are legal provisions which hold the field, it is not open to the State to adopt an arbitrary yardstick for picking up cases for premature release. It must strictly abide by the terms of its policies bearing in mind the fundamental principle of law that each case for premature release has to be decided on the basis of the legal position as it stands on the date of the conviction subject to a more beneficial regime being provided in terms of a subsequent policy determination. The provisions of the law must be applied equally to all persons. Moreover, those provisions have to be applied efficiently and transparently so as to obviate the grievance that the policy is being applied unevenly to similarly circumstanced persons. An arbitrary method adopted by the State is liable to grave abuse and is liable to lead to a situation where persons lacking resources, education and awareness suffer the most.”

CONCLUSION:

19. Consequent to the entire discussion of the factual matrix and legal position as above and taking into account the fact that petitioner has

already undergone much more than the actual sentence as well as the total sentence by including remission period, as minimum required under the 1991 policy, impugned order dated 10.08.2021 cannot be sustained and as such, the same is hereby set aside. The present petition is allowed. The respondent- authorities are hereby directed to consider the premature release case of the petitioner in light of its policy dated 08.07.1991 (Annexure P-1) and also the observations made in this order. It is further directed that till the decision is taken by the competent authority regarding premature release of the petitioner as per this order, he be released on interim bail on furnishing requisite bonds to the satisfaction of the Id. CJM concerned.

January 19, 2024
Sarita

(DEEPAK GUPTA)
JUDGE

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