

CRWP-1363-2023
Date of decision: 16.01.2024

...PETITIONER

V/S

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Mr. Digvijay Nagpal, AAG, Punjab.

HARPREET SINGH BRAR J. (ORAL)

The prayer in the present petition filed under Article 226 of the Constitution of India is for issuance of appropriate directions to the respondents for pre-mature release of the petitioner in terms of the policy dated 08.07.1991.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner was convicted vide judgment of conviction and order of sentence dated 19.04.2011 passed by learned Additional Sessions Judge, Tarn Taran and awarded imprisonment for life under Section 302 of Indian Penal Code in case FIR No.94 dated 01.11.2008 registered under Section 302 of IPC at Police Station Vairowal, Tarn Taran. Learned counsel submits that the petitioner has undergone actual custody of 21 years which includes 08 years of remission. The case of the convicts, who have completed 10 years of actual imprisonment and 14 years with remission, makes him eligible for pre-mature release as per the policy. The case of the petitioner falls under the category (c) of the Government instructions dated 08.07.1991 that requires the collective custody

of the convict to be 14 years which includes actual custody of 10 years. The case of the petitioner has been declined merely because after the outset of Covid-19, the petitioner remained absented for 02 months. The petitioner due to the misconception on account of several extensions granted in the parole period by the jail authorities remained absent for two months.

The learned State counsel has filed Status report on behalf of respondent Nos.2 and 4 by way of affidavit of Gurcharan Singh Dhaliwal, Superintendent Central Jail, Shri Goindwal Sahib and the same is taken on record. The learned State counsel submits that initially the case of the petitioner was recommended for pre-mature release under the policy dated 08.07.1991, however after a report was received from the Senior Superintendent of Police, Tarn Taran, his case for pre-mature release was not recommended on the ground that the petitioner after availing the parole period due to Covid-19 pandemic has not surrendered back on time.

Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, the case of the petitioner for pre-mature release has been declined by the official respondents in a most whimsical and capricious manner which does not confirm to the mandate of Article 14 of Constitution of India. The duty to act fairly is incumbent upon every government official specially when, their orders are likely to have effect on the liberty of the convict. The approach adopted by the official respondents is violative of Article 21 of the Constitution of India. It is trite law that if a person is deprived of his liberty under a procedure which is not reasonable, fair or just, such deprivation would be violative of his fundamental right under Article 21 of Constitution of India. Reliance in this regard is placed upon

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940. This Court has concluded that even if the convict has committed a jail

offence, he cannot be denied the relief of grant of pre-mature release in view of the policy prevailing at that time.

In view of the above, the official respondents are directed to consider the case of the petitioner afresh strictly in accordance with the policy applicable to his case within 08 weeks, in case the petitioner is found eligible for pre-mature release, he shall be released forthwith.

January 16, 2024
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(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |