

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

283. CRWP No.2705 of 2023 (O&M)
Date of Decision:16.01.2024

Rupinder Singh ... Petitioner

Versus

State of Punjab and others ... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nandan Jindal, Advocate
for the petitioner.

Mr. Digvijay Nagpal, AAG, Punjab.

Mr. Akshay Kumar Jindal, Advocate
Amicus Curiae.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Article 226 of the Constitution of India praying for issuance of a writ in the nature of mandamus, directing the respondents to release the petitioner prematurely as per the policy dated 08.07.1991 issued by the Government of Punjab, in terms of the direction issued by the Hon'ble Supreme Court in *State of Haryana Vs. Jagdish 2010 (3) JT 341; AIR 2010 SC 1690*.
2. Learned counsel for the petitioner *inter alia* contends that the petitioner is undergoing sentence for life imprisonment in FIR No.80 dated 10.08.2023 registered under Section 302 IPC at Police Station Garhshankar, District Hoshiarpur vide judgment dated 11.08.2014 passed by the learned Sessions Judge, Hoshiarpur. The appeal preferred by the petitioner against the

judgment of conviction and order of sentence has also been dismissed vide judgment dated 03.10.2019 passed by this Court. Further, the SLP filed by the petitioner also stood dismissed by the Hon'ble Supreme Court vide order dated 22.11.2019. The petitioner has undergone more than 9 ½ years of actual incarceration (more than 14 years with parole and furlough) and his conduct during the said period remained good but the official respondents are not considering his case for premature release in terms of the policy dated 08.07.1991 issued by the Government of Punjab on the ground that case of the petitioner does not fall within the formula prescribed for calculating the actual sentence i.e. custody period during trial period plus conviction period – parole period = actual sentence. It is further contended that the said formula is not applicable in the case of the petitioner as it cannot be applied retrospectively. In fact, the case of the petitioner is covered under category 'C' of the policy dated 08.07.1991.

3. Per contra, learned State counsel submits that the petitioner does not fulfil the requisite criteria of actual period of incarceration as per the formula prescribed by the State Government vide letter dated 16.07.2020.

4. Mr. Akshay Kumar Jindal, Advocate, who was appointed as *amicus curiae*, submits that the State must abide by the terms of policy, which was in force on the date of conviction and it is not open to the State to adopt an arbitrary yardstick for picking up cases for premature release. In support of his contention, he relies upon the judgment passed by the Hon'ble Supreme Court in ***Rajkumar Vs. The State of Uttar Pradesh*** AIR 2023 SC 265 and **Jagdish's case** (supra).

5. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner has been convicted under

Section 302 IPC and sentence to undergo life imprisonment. He has undergone actual sentence of more than 9 ½ years on the date of filing of the petition and with remission/furlough, he has undergone more than 14 years. As such, the petitioner is entitled for the pre-mature release in terms of policy dated 08.07.1991 issued by the Government of Punjab. A Full Bench of the Hon'ble Supreme Court in ***Rajkumar's case*** (supra) speaking through the Chief Justice Dr. Dhananjaya Y. Chandrachud, has held as under:-

“13. 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.”

6. A two Judge Bench of the Hon'ble Supreme Court in ***Jagdish's case*** (supra) speaking through Justice Dr. B.S. Chauhan, has held as under:-

“43. The right of the respondent prisoner, therefore, to get his case considered at par with such of his inmates, who were entitled to the benefit of the said policy, cannot be taken away by the policy dated 13.08.2008. This is evident from a bare perusal of the recitals

contained in the policies prior to the year 2008, which are referable to Article 161 of the Constitution. The High Court, therefore, in our opinion, was absolutely justified in arriving at the conclusion that the case of the respondent was to be considered on the strength of the policy that was existing on the date of his conviction. State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for pre-mature release would be considered after serving the sentence, prescribed in the short sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "life" for pre-mature release, he should be given benefit thereof.

7. Keeping in view the facts and circumstances of the case, the petitioner cannot be denied the benefit of the policy applicable on the date of his conviction and therefore, the official respondents are directed to consider the case of the petitioner for pre-mature release in accordance with the applicable policy dated 08.07.1991 within a period of two months from the date of receipt of certified copy of this order.

8. The instant petition stands disposed of in above terms.

(HARPREET SINGH BRAR)
JUDGE

January 16, 2024
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No