

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

103

CRWP-2538-2024(O&M)

Date of order: 19.03.2024

Chander Pal

.....Petitioner(s)

Vs.

State of UT Chd & Others

.....Respondent(s)

CORAM: HON’BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Tushar Wadhwa, Advocate
for the petitioner.

Mr. J.S. Toor, APP UT Chd.

Nidhi Gupta, J.

Present petition under Articles 226/227 of Constitution of India read with Section 482 Cr.P.C. is filed seeking issuance of a writ in the nature of Certiorari for quashing impugned order dated 13.12.2023 (Annexure P1) passed by the Under Secretary Home, for Home Secretary Chandigarh Administration, UT Chandigarh whereby the case of the petitioner for premature release has been rejected; and further for issuance of a writ in the nature of Mandamus by directing the respondents to release the petitioner, as the petitioner has already undergone the required sentence as per Policy dated 08.07.1991 (Annexure P2).

2. Brief facts of the case are that vide judgment dated 16.03.2009 passed by learned Additional Sessions Judge, Chandigarh, the petitioner was convicted and sentenced to undergo life imprisonment in case FIR No.556 dated 04.10.2008 registered under Section 376 IPC at Police Station Sector 39, Chandigarh, for repeatedly committing rape with

his 12-year-old minor step daughter during the years 2004 to 2008. Later, the minor prosecutrix had given birth to a girl child on 26.10.2008. As per the DNA report, the petitioner was found to be the biological father of the child born to the prosecutrix. As such, the petitioner was convicted as above and a fine of Rs.5 lakh was imposed as compensation to be paid to the prosecutrix under Section 357(3) of Cr.P.C. Against the said judgment, the petitioner filed an appeal bearing No.CRA-D-503-DB-2009 titled as “Chander Pal Vs. State of UT Chd.”, which was dismissed by this Court vide order dated 19.02.2014.

3. Said order was challenged by the petitioner before the Hon’ble Supreme Court by way of SLP-4893 of 2023, which was also dismissed by the Hon’ble Apex Court vide order dated 17.03.2023.

4. Learned counsel for the petitioner inter alia submits that the petitioner had earlier also filed a Criminal Writ Petition bearing CRWP-1044 of 2023, praying for premature release of the petitioner which was disposed of vide order dated 11.08.2023 passed by a Co-ordinate Bench of this Court directing the respondents to reconsider the claim of the petitioner of premature release on the basis of Policy as it stood relevant when he was convicted. It is submitted that in compliance of order dated 11.08.2023, case of the petitioner was reconsidered by the concerned authorities and has been declined vide impugned order dated 13.12.2023 (Annexure P1).

5. Learned counsel contends that the petitioner is entitled for premature release as per Policy dated 08.07.1991 (Annexure P2) issued

by Government of Punjab, Department of Home Affairs and Justice applicable to UT Chandigarh, as per which where death sentence has been commuted to life imprisonment, such cases are to be considered after undergoing period of 14 years actual sentence and with remission of 20 years; and in case of heinous crime, case of the convict would be considered after undergoing period of 12 years of actual sentence and 8 years with remission. It is contended that the case of the petitioner has been rejected on the opinion of learned Additional & Sessions Judge, Chandigarh which is not permissible in law as per law laid down in **CWP No.1065 of 2018** titled as “**Rajbir Singh vs. U.T. Chandigarh**” where it has been held as under:-

“I am of the view that merely on account of opinion of the learned Additional Sessions Judge, Chandigarh, his case could not be rejected. Opinion of the learned Additional Sessions Judge, Chandigarh was one of the circumstances to be considered and is not binding upon the State to exercise powers under Article 161 of the Constitution of India and Sections 432, 433 and 433A of Cr.P.C. The state was required to consider the report of the District Magistrate and the recommendations of the Superintendent, regarding his conduct during jail, in addition to the report of the learned Additional Sessions Judge, Chandigarh and was competent to decide that the opinion of the learned Additional Sessions Judge, Chandigarh is not acceptable in the given circumstances. It is again reiterated that opinion of the learned Additional Sessions Judge, Chandigarh i.e. the convicting Court is only one of the circumstances to be considered and not the sole circumstance to be considered for declining the pre-mature release.”

6. Learned counsel also relies upon law laid down in **CRWP-8232-2022** titled as “**Pohlu Ram @ Polu Ram vs. State of Haryana and others**” decided on 05.02.2024 (Annexure P3).

7. Learned counsel for the petitioner also relies upon full Bench Judgement of Hon'ble Supreme Court in case **"Rajkumar vs. The State of Uttar Pradesh" AIR SC 265**, wherein it has been 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 principal 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 has 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 lead to a situation where persons lacking resources, education and awareness suffer the most."

8. Learned counsel for petitioner places reliance upon judgments of Hon'ble Supreme Court in **"Rajo @ Rajwa @ Rajendra Mandal vs. The State of Bihar and others"** Law Finder DOC ID #2297854; **"Shor vs. State of Uttar Pradesh and another"** Law Finder DOC ID #1735382; and of this Court in **"Ravdeep kaur vs. State of Punjab and others"** Law Finder DOC ID #2333022; **Brahma Nand vs. State of Haryana and others"** Law Finder DOC ID #687902; **"Jai Kishan @ Bhola vs. State of Punjab and others"** Law Finder DOC ID #1944201; **"Himmat Singh @ Brandi vs. State of Punjab and others"** Law Finder DOC ID #794762; **"Lal Singh @ Manjit Singh vs. State of Gujarat and others"** Law Finder DOC ID

#393097; “Kabal Singh vs. State of Punjab and others” Law Finder DOC ID #2022794; “Teja Singh vs. State of Haryana and others” Law Finder DOC ID #137205; and “Pawan Kumar vs. State of Punjab and others” Law Finder DOC ID #1996797.

9. No other argument has been made on behalf of the petitioner.

10. I have heard the learned counsel for the petitioner and perused the case file in detail.

11. As per Section 432 Cr.P.C. the power to commute sentence has been exclusively vested with the appropriate Government and High Court has no power to pass such direction of commutation of sentence of imprisonment by converting it to one of fine. No doubt, as **held by this Court**, in case of **Rajbir Singh** (supra) relied-upon by the counsel for the petitioner, the State is not bound by the opinion of the Additional Sessions Judge, and the same is only one of the aspects to be considered in allowing or declining an application for remission of sentence. In the present case, the impugned order duly reflects that the Under Secretary, UT Chandigarh has applied his own mind, and has taken into account and considered all the relevant factors in taking the decision to decline the petitioner’s application for remission. The impugned order is not driven just by the opinion of the Additional Sessions Judge, relevant part of which reads as follows: –

“Perusal of the record reveals that the convict Chander Pal qua whom the report has been sought was involved in committing rape several times, with his own minor step

daughter, aged 12 years and impregnated her. Thereafter, he tried to conceal it and matter came to light at belated stage and minor child's pregnancy could not be terminated and she gave birth to the child, when she herself was a minor child. Such heinous and brutal act of convict against his own daughter, does not call any leniency. Premature release of such convict pose threat to society. Thus, premature release of convict will not set right example before the society.

In the considered opinion of this Court convict-Chander Pal is not entitled for premature release.

Hence, clemency under Section 432(2) of Cr.P.C. is not approved."

12. The perusal of the impugned order shows that the Under Secretary Home, UT, Chandigarh has considered the entire relevant facts such as the period of sentence undergone by the petitioner, as also the report of the Inspector General of Prisons, UT, as also the heinous nature of the crime committed by the petitioner, and then taken the impugned decision dated 13.12.2023. Merely because the Government has thought it fit to concur with the opinion of the Additional Sessions Judge, Chandigarh does not lead to the inference that the Government has exercised its discretion incorrectly.

13. Furthermore, no doubt the petitioner has been in custody since 04.10.2008. However, the petitioner has to appreciate that just because he has undergone 'X' number of years of the awarded sentence, does not automatically entitle him for remission of the remaining period. It is an established canon of justice that 'life sentence' in law,

implies imprisonment for the entire natural life of the convict, till his last breath.

14. Moreover, power conferred under Section 432 CRPC has to be exercised with the utmost caution. The accused is convicted and sentenced after detailed deliberation and analysis, and therefore, the sentence so imposed by judicial order cannot be truncated mechanically by way of an administrative/executive order. Accordingly, it is mandatory that all attendant factors leading up to the conviction be kept in mind prior to granting remission. It is also to be borne in mind that it is not the 'right' of a convict that his sentence be remitted. The only right which can be claimed by a convict is that his application for remission of sentence be considered by the concerned State authorities. The same has been done in the present case. As such, no ground for interference is made out.

15. I am supported in my view by a Constitution Bench judgment of the Hon'ble Supreme Court in case titled as **Union of India v. V. Sriharan @ Murugan and Ors. (SC)(Constitution Bench)** : Law Finder Doc Id # 720918 wherein the following questions were formulated for the kind consideration of the Hon'ble Constitution Bench:

“8. Keeping the above factors in mind, precisely the nature of questions culminates as follows:

(i) As to whether the imprisonment for life means till the end of convict's life with or without any scope for remission?

(ii) Whether a special category of sentence instead of death for a term exceeding 14 years can be made by putting that category beyond grant of remission?

(iii) Whether the power under sections 432 and 433 Code of Criminal Procedure by

Appropriate Government would be available even after the Constitutional power under Articles 72 and 161 by the President and the Governor is exercised as well as the power exercised by this Court under Article 32?

(iv) Whether State or the Central Government have the primacy under section 432(7) of Code of Criminal Procedure?

(v) Whether there can be two Appropriate Governments under Section 432(7)?

(vi) Whether power under Section 432(1) can be exercised suo motu without following the procedure prescribed under section 432(2)?

(vii) Whether the expression "Consultation" stipulated in 435(1) really means "Concurrence"?

16. After extensive consideration of the Constitutional provisions as also the statutory provisions, the Hon'ble Constitution Bench laid down the following law: –

“53. Having noted the ratio of the above said decision in this question, we can also profitably refer to a subsequent Constitution Bench decision reported as **Maru Ram etc., v. Union of India and another, 1981 (1) SCR 1196. At pages 1222-1223**, this Court while endorsing the earlier ratio laid down in Godse (supra) held as under :

"A possible confusion creeps into this discussion by equating life imprisonment with 20 years imprisonment. Reliance is placed for this purpose on Section 55 I.P.C. and on definitions in various Remission Schemes. All that we need say, as clearly pointed out in Godse, is that these equivalents are meant for the limited objective of computation to help the State exercise its wide powers of total remissions. Even if the remissions earned have totaled upto 20 years, still the State Government may or may not release the prisoner and until such a release order remitting the remaining part of the life sentence is passed, the prisoners cannot claim his liberty. The reason is that life sentence is nothing less than life- long imprisonment. Moreover, the penalty then and now is the same - life term. And remission vests no right to release when the sentence is life imprisonment. No greater punishment is inflicted by Section 433A than the law annexed originally to the

crime. Nor is any vested right to remission cancelled by compulsory 14 years jail life once we realise the truism that a life sentence is a sentence for a whole life. See **Sambha Ji Krishan Ji. v. State of Maharashtra, AIR 1974 Supreme Court 147** and **State of Madhya Pradesh v. Ratan Singh & Ors. [1976] Supp. SCR 552"**

(Emphasis added)

Again, at page 1248 it is held as under :

"We follow **Godse's case (supra)** to hold that imprisonment for life lasts until the last breath, and whatever the length of remissions earned, the prisoner can claim release only if the remaining sentence is remitted by Government".

54. In an earlier decision of this Court reported as **Sambha Ji Krishan Ji v. State of Maharashtra, AIR 1974 Supreme Court 147**, in paragraph 4 it is held as under :

"4.As regards the third contention, the legal position is that a person sentenced to transportation for life may be detained in prison for life. Accordingly, this Court cannot interfere on the mere ground that if the period of remission claimed by him is taken into account, he is entitled to be released. It is for the Government to decide whether he should be given any remissions and whether he should be released earlier."

55. Again in another judgment reported as **State of Madhya Pradesh v. Ratan Singh and others, (1976) 3 SCC 470**, it was held as under in paragraph 9 :

"9. From a review of the authorities and the statutory provisions of the Code of Criminal Procedure the following proposition emerge :

(i) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the Appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under section 401 of the Code of Criminal Procedure;"

(Emphasis added)

It will have to be stated that Section 401 referred to therein is the corresponding present Section 432.

XXX

61. Having noted the above referred to two Constitution Bench decisions in Godse (supra) and Maru Ram (supra) which were consistently followed in the subsequent decisions in Sambha Ji Krishan Ji (supra), Ratan Singh (supra), Ranjit Singh (supra), Ashok Kumar (supra) and Subash Chander (supra). The first part of the first question can be conveniently answered to the effect that imprisonment for life in terms of Section 53 read with section 45 of the Penal Code only means imprisonment for rest of the life of the prisoner subject, however, to the right to claim remission, etc. as provided under Articles 72 and 161 of the Constitution to be exercisable by the President and the Governor of the State and also as provided under section 432 of the Code of Criminal Procedure.

XXX

78. Though we are not attempting to belittle the scope and ambit of executive action of the State in exercise of its power of statutory remission, when it comes to the question of equation with a judicial pronouncement, it must be held that such executive action should give due weight and respect to the latter in order to achieve the goals set in the Constitution. It is not to be said that such distinctive role to be played by the Executive of the State would be in the nature of a subordinate role to the judiciary. In this context, it can be said without any scope of controversy that when by way of a judicial decision, after a detailed analysis, having regard to the proportionality of the crime committed, it is decided that the offender deserves to be punished with the sentence of life imprisonment (i.e.) for the end of his life or for a specific period of 20 years, or 30 years or 40 years, such a conclusion should survive without any interruption. Therefore, in order to ensure that such punishment imposed, which is legally provided for in the Indian Penal Code read along with Criminal Procedure Code to operate without any interruption, the inherent power of the Court concerned should empower the Court in public interest as well as in the interest of the society at large to make it certain that such punishment imposed will operate as imposed by stating that no remission or other such

liberal approach should not come into effect to nullify such imposition.

(Emphasis mine)

XXX

214. Section 53 of the I.P.C. envisages different kinds of punishments while Section 45 of the I.P.C. defines the word 'life' as the life of a human being unless the contrary appears from the context. The life of a human being is till he is alive that is to say till his last breath, which by very nature is one of indefinite duration. In the light of the law laid down in Godse and Maru Ram, which law has consistently been followed the sentence of life imprisonment as contemplated under Section 53 read with Section 45 of the I.P.C. means imprisonment for rest of the life or the remainder of life of the convict. The terminal point of the sentence is the last breath of the convict and unless the appropriate Government commutes the punishment or remits the sentence such terminal point would not change at all. The life imprisonment thus means imprisonment for rest of the life of the prisoner.

215. In paras 27 and 38 of the decision in **State of Haryana v. Mahender Singh and others, 2007(4) RCR (Criminal) 909 : 2007(13) SCC 606**, this Court observed:-

"27. It is true that no convict has a fundamental right of remission or shortening of sentences. It is also true that the State in exercise of its executive power of remission must consider each individual case keeping in view the relevant factors. The power of the State to issue general instructions, so that no discrimination is made, is also permissible in law.

38. A right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder. Although no convict can be said to have any constitutional right for obtaining remission in his sentence, he in view of the policy decision itself must be held to have a right to be considered therefor. Whether by reason of a statutory rule or otherwise if a policy decision has been laid down, the persons who come within the purview thereof are entitled to be treated equally. **(State of Mysore v. H. Srinivasmurthy)"**

The convict undergoing the life imprisonment can always apply to the concerned authority for obtaining remission either under Articles 72 or 161 of the Constitution or under Section 432 Cr.P.C. and the authority would be obliged to consider the same reasonably. This was settled in the case of Godse which view has since then been followed consistently in **State of Haryana v. Mahender Singh (supra)**, **State of Haryana v. Jagdish (supra)**, **Sangeet v. State of Haryana (supra)** and **Laxman Naskar v. Union of India and others, 2000(1) RCR (Criminal) 839 : (2000) 2 SCC 595**. The right to apply and invoke the powers under these provisions does not mean that he can claim such benefit as a matter of right based on any arithmetical calculation as ruled in Godse. All that he can claim is a right that his case be considered. The decision whether remissions be granted or not is entirely left to the discretion of the concerned authorities, which discretion ought to be exercised in a manner known to law. The convict only has right to apply to competent authority and have his case considered in a fair and reasonable manner.”

(Emphasis mine)

17. As such, from the unambiguous position in law as unequivocally enunciated here in above, it is clear that the argument made on behalf of the petitioner that the petitioner is entitled to remission as he has already undergone the ‘required’ sentence as per Policy dated 08.07.1991, is entirely misplaced and untenable.

18. Further, I have perused each and every judgment cited on behalf of the petitioner. Each judgment is distinguishable on facts and/or law. As such, the petitioner can derive no benefit from the same. In any event, the above referred judgment in case of **Sriharan @ Murugan (supra)** rendered by the Constitution Bench of the Hon’ble Apex Court will prevail.

19. It is also important to note that as per the Policy dated 08.07.1991 (Annexure P2) repeated rape with minor victim is not included in the list of 'heinous crime' as defined in the Policy for purposes of premature release. The State may consider revisiting the same to provide for cases such as the present one where the petitioner has been convicted for the repeated rape over several years (from 2004 to 2008), of his minor 12-year-old step daughter. Not only that, but the petitioner also impregnated her and by the time the matter came to light, it was too late to terminate the pregnancy. The trauma undergone by the minor victim cannot even begin to be imagined. Not only was the victim subjected to violation of the worst kind, that too by a father like figure in whom the minor child would normally repose trust, but the victim was also forced to become a mother while still a minor herself. It will not be an exaggeration to state that the victim would be scarred for life due to the commission of the present crime of the petitioner. As such, the deficiency in the Policy dated 8.7.1991 needs to be addressed, and in cases of heinous offences such as the present one, it may be recommended that prisoners should not be held entitled to premature release. Inspiration for this may be drawn from such a Policy in force in the State of Tamil Nadu. In this regard, reference may be made to a Division Bench judgment of the Madras High Court in case of **P.V. Bakthavatchalam Vs. State of T.N., 1991 CrLJ 1870, 1873 (Mad-DB)**, wherein it has been held that: –

“11. Restriction on premature release for heinous offences - Constitutionally Valid. - The prisoners are not entitled to be released prematurely as a matter of right. Either under this section or under any other section it is entirely the discretion of the Government to release the prisoners prematurely. As a self-

imposed restriction, accepting the recommendation of the All India Committee of Prison Reforms, the Government has issued the Government order to the effect that the prisoners sentenced under certain sections of the Indian Penal Code are not eligible for premature release. Sentences awarded for offences which are heinous in character such as rape, forgery, dacoity, terrorist crimes and offences against the State; and prisoners convicted of economic offences, black-marketing, smuggling and misuse of power and authority; and prisoners sentenced under prevention of Corruption Act, Suppression of Immoral Traffic in Women and Girls Act, Drugs Act and Prevention of Food Adulteration Act only have been made not eligible for premature release. May be the Government thought that the prisoners who have committed the said offences should not be shown any mercy and that if they are released they may again be a menace to the society. Therefore the Government order is quite reasonable and certainly there is no discrimination offending Art. 14 or any other Article of the Constitution.

(Emphasis mine)

20. Accordingly, in view of the discussion here in above, I find no infirmity is made out in the impugned order. The present petition stands **dismissed**.

21. Pending application(s) if any also stand(s) disposed of.

19.03.2024

Sunena

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

(Nidhi Gupta)
Judge