

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRWP-2511-2024 (O&M)

Reserved on 21.03.2024

Pronounced on 14.06.2024

Jiya Lal

... Petitioner

VS.

State of UT Chandigarh & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. HS Jaswal, Advocate for the petitioner

Mr. JS Toor, APP, UT Chandigarh and
Mr. Adhiraj Toor, Advocate for the respondents

Sandeep Moudgil, J.

(1). The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India for quashing the impugned order dated 23.02.2024 (Annexure P9) passed by respondent No.1 whereby the premature release case of the petitioner has been declined with a further direction to re-consider the case of the petitioner afresh and release him forthwith in terms of Punjab Govt. policy/instructions dated 08.07.1991 (Annexure P2) as applicable to UT Chandigarh.

(2). Learned counsel for the petitioner submits that the petitioner along with others was tried and convicted by the trial Court and consequently sentenced to undergo imprisonment for life under Section 302, 406, 120-B IPC along with fines, as specified, vide judgment and order dated 23/26.07.2008 (Annexure P1) in case FIR No.225 dated 17.08.2000 under Sections 460/302/120-B IPC, registered at Police Station West UT Chandigarh.

(3). It is urged that having completed 18 years 4 months 3 days of actual sentence (24 years and 5 months including remissions and excluding parole period), the petitioner became eligible for consideration for premature release under the policy instructions dated 08.07.1991 (Annexure P2), however, the said request of the petitioner has been declined vide order dated 17.02.2021 (Annexure P4) passed by the Administrator to the UT Chandigarh – respondent No.1 on account of non-recommendations by the District & Sessions Judge, Chandigarh and District Magistrate, Amethi (Uttar Pradesh). He further submits that the order dated 17.02.2021 was challenged in CRWP-4264-2021 by the petitioner which was disposed of vide order dated 08.12.2022 (Annexure P6) with a direction to the respondents to decide the matter afresh and thereafter, vide impugned order dated 14.03.2023 (Annexure P7), the case of the petitioner was declined by respondent No.1.

(4). Thereafter, it is argued that the petitioner impugned the said order dated 14.03.2023 in CRWP-5001-2023 which was allowed vide order dated 10.01.2024 with a direction to the respondent No.2 to consider the case of the petitioner for premature release after obtaining opinion of the Presiding Officer, however, the District Magistrate did not recommend the case of the petitioner for premature release and declined the same vide impugned order dated 23.02.2024 (Annexure P9).

(5). Learned counsel further argued that the case of the petitioner is totally covered under the policy (Annexure P2) which was prevalent at the time of conviction and as such reliance has been placed on ***State of Haryana vs. Jagdish & Ors. 2010(2) RCR CrL 464***, to say that the policy prevalent on

the date of conviction would be applicable for consideration of premature release of the convict/prisoners.

(6). It is worthwhile to mention that the petitioner filed appeal before this Court i.e. CRA-D-51-0DB-2008 and the said appeal was ultimately dismissed vide judgment dated 23.01.2012. Learned counsel is unaware as to whether any SLP has been preferred or not.

(7). Heard learned counsel for parties and gone through the record.

(8). As can be seen from a perusal of the order dated 19/23.02.2024 (Annexure P9), the opinion of the Presiding Judge through the District & Sessions Judge, Chandigarh was sought in terms of the provisions of Section 432 CrPC which says that the petitioner-convict Jiya Lal was involved in the robbery of cash in the liquor vend and house trespass after causing death of Nand Kishore and Roop Lal. It has further referred to the policy instructions of the Government which provides for consideration of premature release of the convicts on the ground of good conduct and to become eligible for consideration under the policy, the convict should not have committed any jail offence for the period of five years; nature of offence committed; and various other factors.

(9). The District Magistrate, Amethi was also requested by respondent No.1 to send his report regarding likelihood of commission of breach of peace or crime and vide report dated 23.01.2024 sent by Superintendent of Police, Amethi, he has mentioned that though there is no case registered against the petitioner and his family at the local police station, however, as per the information gathered from the village head and other persons, the possibility that the peace and order of the police station area

would be affected due to premature release of the said prisoner, has not been ruled out.

(10). The Constitution Bench of the Supreme Court in **GV Godse Vs. State of Maharashtra 1961 (1) Cri.L.J. 736**, held that imprisonment for life means “*prison-life-for-rest-of-the-life-span*” and not for “*20 years*” and therefore, the convict does not acquire any right to be released prematurely as it is within the exclusive province of the appropriate Government to grant or reject the remission.

(11). In another judgment rendered in **Ram Chander vs. State Of Chhattisgarh, 2022 SCC OnLine SC 500**, the Supreme Court considered the entire spectrum of the provisions of the Code of Criminal Procedure qua the premature release and has held as under:-

*“11. The respondents submit that the appropriate government has the absolute discretion to decide whether the application for remission should be allowed. Indeed, in **Ratan Singh**¹ (supra), this Court has observed that the State has an undoubted discretion to remit or refuse to remit the sentence and no writ can be issued to direct the State Government to release the petitioner. The Court was interpreting Section 401 of the Code of Criminal Procedure 1898, which corresponds to Section 432 of the CrPC. Section 401 empowered the appropriate government to remit the whole or any part of the punishment sentence. The Court while summarizing the propositions that govern the exercise of the power of the remission, observed:*

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

¹ State of Madhya Pradesh v. Ratan Singh, (1976) 3 SCC 470

- "(1) 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 Penal Code, 1860. 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;*
- (2) that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence no writ can be issued directing the State Government to release the prisoner;*
- (3) that the appropriate Government which is empowered to grant remission under Section 401 of the Code of Criminal Procedure is the Government of the State where the prisoner has been convicted and sentenced, that is to say, the transferor State and not the transferee State where the prisoner may have been transferred at his instance under the Transfer of Prisoners Act;*
- (4) that where the transferee State feels that the accused has completed a period of 20 years it has merely to forward the request of the prisoner to the concerned State Government, that is to say, the Government of the State where the prisoner was convicted and sentenced and even if this request is rejected by the State Government the order of the Government cannot be interfered with by a High Court in its writ jurisdiction."*

(emphasis supplied)

(12). In *Sharafat Ali V. State Of Uttar Pradesh, 2022 SCC OnLine SC 193*, the Apex Court held that the first principle which must be noted while adjudicating the prayer for premature release of convicts is that the application for premature release has to be considered on the basis of the policy as it stood on the date when the petitioner was convicted of the offence and secondly, whether the release of the petitioner would pose any danger to the society, and there has to be application of mind to the facts of the case by the Appropriate Authority while so considering such applications.

(13). The appropriate authority i.e. Respondent No.1 – the Administrator to the UT Chandigarh, therefore, while considering premature release of a life convict is expected not only to consider the degree of criminality but also the facts and circumstance that were not before the trial Court at the time of conviction. While considering so, it has taken and rightly so, the report of the District & Sessions Judge, Chandigarh as also the District Magistrate, Amethi who in turn sought report of the Superintendent of Police and local village heads. It is on the basis of the holistic appreciation of recommendations by the stakeholders and the subjective satisfaction of the appropriate authorities and after due application of their collective minds, the case of the petitioner has been rejected especially keeping in view the fact that the premature release of the petitioner, who is a “lifer”, would affect the peace and order of the area and in that event, the application or eligibility under the policy instructions becomes a matter of secondary importance.

(14). Needless to say that premature release is not a matter of right, and the term "life sentence" means that it is for the entire life and the right to apply and invoke the powers either under Articles 72 or 161 of the

Constitution or under Section 432 Cr.P.C. does not mean that he can claim such benefit as a matter of right based on any arithmetical calculation. All that he can claim is a right that his case be considered and the decision whether or not to grant remission is entirely open to the discretion of the concerned authorities to be exercised in a manner known to law. This view of mine finds support from the judgment of the Apex Court in Union of India vs. V.Sriharan, (2016) 7 SCC 11, which view was reiterated in Rajan vs. Home Secretary, Home Department of Tamil Nadu and others, reported in (2019) 14 SCC 114.

(15). Therefore, keeping in view the dictums in Ram Chander vs. State Of Chhattisgarh and Sharafat Ali (cited supra), this Court is of the firm view that in the instant case, the impugned order does not bristle with any mala fide or non-exercise of power vested nor is there any violation of principles of natural justice and as such, the action of the Executive exercising its plenary power cannot be interfered under the garb of judicial review.

(16). Dismissed.

14.06.2024
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

- Yes/No
- Yes/No