

CRWP-5297-2022

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-5297-2022

Date of decision: 13.08.2024

KRISHAN

. . . PETITIONER

V/s

STATE OF HARYANA AND OTHERS

. . . RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Manoj Chahal, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

SUMEET GOEL, J.

1. Present criminal writ petition is filed by the petitioner who is undergoing sentence of imprisonment for life, seeking direction to the respondents for his premature release from custody as per policy dated 12.04.2002 framed by the Haryana Government regulating the premature release of prisoners. The petitioner is convicted under Sections 376(1)(g) and 302/34 of IPC, & sentenced to imprisonment for life, by the Court of Additional Sessions Judge, Hisar vide Judgment dated 02.12.2003 and order of sentence dated 06.12.2003 respectively, arising out of FIR No.264 dated 24.10.2001 registered at Police Station Sadar, Hansi.

2. Perusal of the record of the case shows that the case of the petitioner for premature release was considered by the State Level Committee on 02.02.2022. The State Level Committee held the

petitioner not entitled to be extended the benefit of premature release and in agreement with the decision of State Level Committee, the Additional Chief Secretary to Government of Haryana, Jails Department, vide order dated 04.03.2022 (Annexure P-4), rejected the case of the petitioner for premature release.

3. Challenging the order (Annexure P-4), dated 04.03.2022 passed by respondent No.1 the present criminal writ petition is filed seeking quashing of said the order (Annexure P-4) & for premature release of the petitioner. It is argued on behalf of the petitioner that the impugned order dated 04.03.2022 was passed without assigning any reason for the rejection of the case of the petitioner for premature release. It is submitted that the policy dated 12.04.2002 under which the case of the petitioner has been considered by the respondents, makes out a case for premature release of the petitioner, as it prescribes for grant of premature release once the convict in a heinous offence completes 20 years actual sentence and 25 years total sentence with remissions. While referring to the custody certificate of the petitioner (Annexure P-2) it is submitted that till 15.04.2022, the petitioner had undergone actual custody of more than 20 years and a total sentence including remissions of more than 25 years.

4. While rebutting the case of the petitioner it is argued on behalf of the respondents that the case of the petitioner was duly considered by the State Level Committee and after due deliberation, the petitioner was not found fit for premature release at present. The policy prescribes for consideration of the case of the petitioner which

exercise has already been undertaken by the respondents. Placing reliance upon the judgment passed by the Hon'ble Supreme Court of India in the case of ***Maru Ram vs Union of India, AIR 1980 SC 2147***, it is contended that a sentence of imprisonment for life is imprisonment for the whole of the remaining period after conviction of the convicted person's natural life. It is stressed that even if the remissions earned have totalled 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 prisoner cannot claim his liberty.

5. Further, referring to the judgment dated 22.07.2008 passed by the Hon'ble Supreme Court of India in the case of ***Swami Shardhanand @ Murli Manohar Mishra vs State of Karnataka (SC) 2008(3) RCR (Criminal) 772***, it is argued that it is at the sole discretion of the Government to exercise the power conferred on it in accordance with law. A convict has no right to claim premature release, as life imprisonment means the whole life of a convict in jail. In support of this argument on behalf of the respondent reliance is further placed on the judgment passed by the Hon'ble Supreme Court of India in SLP (CRL.) No.6467/2012 CRL.M.P. No.17082/2012 titled as State of U.P. Vs. Sanjay Kumar. In view of these submissions on behalf of the respondents it is contended that the present criminal writ petition is not maintainable and is liable to be dismissed.

6. I have heard the rival arguments of both sides and have gone through the case record carefully.

7. The submissions made on behalf of the respondent that the remission of sentence of the convict being sole discretion of the State, the criminal writ petition is not maintainable, is wholly misconceived. The ratio decidendi of the judgments relied upon by the respondents does not lay down the proposition of law as canvassed on behalf of the respondents. The policy dated 12.04.2002 (Annexure P-3) as framed by the State of Haryana, itself nullifies the arguments advanced on behalf of the respondents. The said policy has been framed by the State with certain parameters laid down therein for consideration of the request of a convict for his premature release. It does not behoove the State in view of this policy to argue that the convict cannot claim his entitlement to consideration under the policy for premature release as framed by the State. Perusal of the policy dated 12.04.2002 shows that the convicts whose death sentence has been commuted to life imprisonment and convicts who have been imprisoned for life having committed a heinous crime are also entitled to be considered for release from custody after completion of 20 years actual sentence and 25 years total sentence with remissions.

8. The argument advanced on behalf of the respondents that the premature release of the convict being a matter of sole discretion of the State is required to be clarified that the said discretion on the part of the State is not to be exercised arbitrarily.

The policy dated 12.04.2002 comprising a benevolent act of discretion on the part of the Sovereign State having statutory sanction under Sections 432 and 433 of the Code of Criminal Procedure, the discretion vested therein must be exercised judiciously and pragmatically. While dealing with the discretion of the executive as vested in Section 432 of the Code of Criminal Procedure Code, the Hon'ble Supreme Court of India in the case of ***Rajo @ Rajwa @ Rajendra Mandal, 2023(4) RCR (Criminal) 370*** has held as under:

10. That this executive power which is inherently discretionary in nature, has to be exercised fairly, reasonably, and not arbitrarily, has been held by this court in numerous cases.[8] Absence to do so, would - like is the case for other executive action - compel the Court to exercise its judicial review, and in appropriate cases remit the matter for reconsideration.[9*] The procedure laid out in Section 432(2), has been held to be mandatory by a five-judge bench of this Court, in Union of India v. V. Sriharan [2015] 14 SCR 613 [hereafter referred to as 'Sriharan']. The court also observed how the said procedure operated as a safeguard, much like the ones provided under Articles 72 and 161 of the Constitution:*

[8 State of Haryana v. Mohinder Singh [2000] 1 SCR 698; Sangeet v. State of Haryana [2012] 13 SCR 85; Union of India v. V. Sriharan [2015] 14 SCR 613; Rajan v. The Home Secretary, Home Department of Tamil Nadu [2019] 6 SCR*

1035; Ram Chander v. State of Chhattisgarh [2022] 4 SCR 1103.]

[9 See Rajan and Ram Chander (ibid).]*

9. Perusal of the impugned order dated 04.03.2022 (Annexure P-4) passed by respondent No.1 makes it amply clear that the said order has been passed by simply stating that after agreeing with the recommendations of the State Level Committee, the case for premature release of the petitioner was rejected. Contents of the impugned order manifestly show that besides noting the offence committed by the petitioner and the sentence imposed upon him nothing more has been considered while passing the said order. The impugned order by dint of its contents cannot by any stretch of the imagination be termed as a speaking order, divulging the factors that weighed with the respondents while rejecting the case of the petitioner for premature release.

10. The respondents while acting under the executive authority are bound to pass the reasoned order thereby clearly spelling out the factors that weighed with the respondents while rejecting the claim of the petitioner qua premature release. It is well-settled proposition of law that an executive action must be informed by reason and objective satisfaction must be the basis for an executive decision. The respondents being under the authority of the welfare State are required to act bonafidely and not arbitrarily, especially when the impugned order is affecting the substantial rights

of the petitioner prejudicially. Though there are no statutory provisions controlling the action of the respondents in the matter, the petitioner has a legitimate expectation of being treated in a reasonable and fair manner before passing the impugned order against the petitioner.

11. Hon'ble Supreme Court of India in the case of ***State of Haryana vs Jagdish, 2010(2) RCR (Criminal) 464***, while laying down the factors to be considered while deciding the case of premature release of a prisoner has held as under:

“At the time of considering the case of pre-mature release of a life convict, the authorities may require to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict anymore; the socio-economic condition of the convict's family and other similar circumstances.”

12. Perusal of the impugned order rejecting the claim of the petitioner for his premature release in terms of policy dated 12.04.2002, shows that none of the above factors have been considered and discussed while passing the impugned order.

13. The reason for rejecting the prayer of the petitioner as mentioned in the impugned order that the State Level Committee

observed that the petitioner committed a crime in a gruesome, diabolical and brutal manner, hence he does not deserve any concession of Government at this stage, clearly does not withstand the requirement as laid down by the Hon’ble Supreme Court in *Jadish’s case* (supra). The said observation of the State Level Committee making the basis for rejection of the claim of the petitioner would rather run antithesis to the provisions of the policy dated 12.04.2002 itself. Had there been any intention of the State, while framing said Policy, which is a subordinate legislation, under section 432 of the Code of Criminal Procedure, the State would not have put the said category of criminals in the purview of consideration for premature release in the policy itself.

14. In view of the foregoing findings, the impugned order, dated 04.03.2022(Annexure P-4) is set aside and the present Criminal Writ Petition is disposed of by remitting the matter back to the Additional Chief Secretary to Government of Haryana, Jail Department with a direction to decide the prayer of the petitioner seeking premature release, by passing a fresh order in the light of observations made above, within a period of four weeks from receipt of copy of this order.

(SUMEET GOEL)
JUDGE

August 13, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No