



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP-4164-2024(O&M)

Reserved on: 27.08.2024

Date of Pronouncement: 31.08.2024

PARGAN SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr.S.S.Rana, Advocate,
for the petitioner.

Mr.Pardeep Bajaj, DAG, Punjab.

KULDEEP TIWARI, J.(Oral)

1. Prayer of the petitioner for releasing him prematurely in view of the Government Policy dated 08.07.1991 (Annexure P-1), has been declined vide impugned order dated 22.04.2024 (Annexure P-6), which caused grievance to the present petitioner, and propelled him to file the instant petition under Article 226 of the Constitution of India, wherein, challenge has been thrown to the aforesaid impugned order, and a prayer has been made to release him prematurely as he claimed himself to be covered under the policy of the State of Punjab.

FACTS OF THE CASE

2. The petitioner alongwith other co-accused Harminder Singh, was arrayed as an accused in FIR No. 25, dated 25.03.1999, under

Sections 302, 307 and 397 of the IPC, and under Section 25/27 of the Arms Act, registered at Police Station City Phagwara, and was tried for the said offences, and ultimately was convicted and sentenced to undergo imprisonment for life by the learned Sessions Judge, Kapurthala, vide judgment/order dated 27.09.2008, and the statutory appeal as preferred by the petitioner challenging the aforesaid verdict, was also dismissed vide judgment dated 13.12.2012.

3. On completion of the actual sentence of 10 years (with remissions 14 years), earlier the Jail Superintendent concerned, after obtaining legal opinion recommended for premature release of the petitioner on dated 18.06.2020, which was further approved by the District Magistrate, Hoshiarpur, as well as Senior Superintendent of Police concerned, as the conduct of the present petitioner remained good and satisfactory throughout in jail, as well as outside while being on parole and furlough. However, the committee constituted for consideration of the case of life convicts for grant of premature release, rejected the case of the present petitioner, and sent his case back to the concerned authorities on dated 15.12.2020. Thereafter, the Jail Superintendent concerned again recommended the case of the petitioner for grant of premature release on dated 14.03.2021, and this time also his case was further recommended by the District Magistrate, Hoshiarpur as well as Senior Superintendent of Police, Hoshiarpur.

4. The case of the petitioner was not decided by the competent authorities, which propelled the petitioner to approach this Court, by way

of filing petition bearing, CRWP-1335-2021 for grant of premature release in terms of the Government policy dated 08.07.1991, and this Court vide order dated 11.11.2021, directed the respondents to reconsider the case of the petitioner for premature release, within two weeks. Therefore, on the adjourned, i.e. on dated 09.12.2021, the then learned State counsel, informed that the case of the petitioner has been recommended to the Hon'ble Governor for its consideration.

5. In view of the above statement, the petitioner was ordered to be released on interim bail till the final decision of the Hon'ble Governor.

6. Finally, the case was taken up by this Court on dated 08.02.2024, and this Court again directed the respondents to take the decision on premature release of the petitioner within two weeks, and the petitioner was directed to surrender before the jail authority concerned on dated 19.02.2024. Accordingly, the petitioner surrendered and is in jail since then.

7. Finally, the case of the petitioner was put up before the Council of Ministers on 09.03.2024, who also refused to grant the premature release of the petitioner, without assigning any reason and further on the basis of non-recommendation report his case was finally rejected by the Hon'ble Governor on 24.04.2024 (Annexure P-6).

SUBMISSIONS MADE BY LEARNED COUNSEL FOR THE PETITIONER

8. Learned counsel for the petitioner submits that the petitioner was convicted vide order dated 27.09.2008, therefore, his case is covered under the Government Policy dated 08.07.1991 (Annexure P-1), and no

reason whatsoever, has been assigned in the impugned order for declining the relief of the premature release of petitioner, despite he being duly covered under the said policy.

9. He further submits that the impugned order is non-speaking, and no reason whatsoever, has been assigned, while declining the prayer of the petitioner.

10. He also submits that the case of the petitioner has wrongly been considered under the policy dated 14.12.2017, whereas, his case was to be considered as per the Government Policy dated 08.07.1991 (Annexure P-1), which is applicable at the time of conviction.

SUBMISSIONS MADE BY LEARNED STATE COUNSEL

11. On the other hand, learned State counsel opposed the grant of asked for relief to the present petitioner on the ground that the petitioner has committed a heinous offence.

12. He further submits that the petitioner has no right to be considered for premature release, but has fundamental right for remission or shortening the sentence. The case of the petitioner for premature release has been considered by the competent authorities concerned, and the competent authorities have not found the case of the petitioner for premature release, and rejected the same.

ANALYSIS

13. This Court has considered the rival submissions made by learned counsel for the parties concerned, and has perused the entire record of the case.

14. From the facts, as mentioned above, it is not under dispute that the petitioner was convicted vide order dated 27.09.2008, and therefore, at that time the policy of 08.07.1991, was invoked, therefore, the case of the petitioner is required be considered under the said policy only.

15. The Supreme Court in case of **“State of Haryana and others vs. Jagdish” 2010(4)SCC 216**, categorically held that the policy which was prevailing on the date of judgment of conviction would be applicable to consider the case of a 'lifer' for grant pre-mature release, and not the policy which existed on the date of consideration. The relevant extract of the judgment reads 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 “lifer” for pre-mature release, he should be given benefit thereof.”

16. In view of the above, as per the principle of law, the petitioner's case was required to be considered on the Government Policy dated 08.07.1991. As per the said policy of 1991, the case of the petitioner is covered under Column-C of 1.1. As per that policy life

convict who has not committed any heinous crime, his case for premature release would be considered after undergoing 10 years of actual sentence, and with remissions 14 years.

17. Column C of 1.1 reads as under:-

	A	B	C		D	E
	XXXX	XXXX	Convicts who have been imprisoned for life for offences for which death is a penalty but crimes are not considered heinous		XXXX	XXXX
Adult			1	2		
			10	14		
Female			08	12		

18. As per the custody certificate, filed by the learned State counsel *qua* the petitioner, today in the Court, the petitioner has undergone actual custody of 11 years 06 months 08 months (after conviction), and with remissions he has undergone 15 years 9 months and 01 day, as on today.

19. A perusal of the impugned order (*supra*), reflects that the only reason assigned for not granting the relief of premature release is refusal by the Council of Ministers to grant such relief. No other reason is assigned to the conclusion reached by the competent authority. Even the impugned order does not reflect that under which policy the case of the petitioner was considered, or whether the petitioner is eligible to be released under the policy applicable to his case. In any administrative order, reasons are the nexus between the facts considered and conclusion reached. In the absence of reasons, the order cannot be termed as

speaking order and a non-speaking order does not pass the test of eligibility.

20. It is not in dispute that the power of the executive is inherent and discretionary in nature. So far as, in the issue of grant of premature release, however, this power cannot be exercised arbitrarily.

21. In the case of “**Sadhu Singh vs. State of Punjab**” 1984(2) **RCR (Crl.) 83**, it has been categorically held that once the Government has framed a policy, the same is to be applied uniformly and invariably so as to avoid the charge of discrimination.

FINAL ORDER

22. In view of the above discussion, the impugned order (*supra*), does not stands towards the legal scrutiny, therefore requires interference of this Court. Consequently, the impugned order dated 22.04.2024 (Annexure P-6), is hereby **set aside**, being illegal, and nonest in the eyes of law, and the competent authorities concerned are directed to reconsider the case of the petitioner in terms of apt Government Policy, in accordance with law by passing a speaking order, within a period of three months from the date of receipt of certified copy of this order.

23. Hence, the sentence of the petitioner is suspended for a period of three months or till the authority concerned decides the case of the petitioner regarding premature release, whichever is earlier.

24. In case there is rejection of the request of premature release or after three months from today, whichever is earlier, the petitioner shall re-step into the prison.

25.

Disposed of accordingly.
26.

All pending application(s) stand **disposed** of accordingly.

August 31, 2024

dharamvir

(KULDEEP TIWARI)

JUDGE

Whether speaking/reasoned.

:

Yes/No

Whether Reportable.

:

Yes/No