

IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH

CRWP-4465-2023 (O&M)

Reserved on: February 20, 2024

Pronounced on: February 26, 2024

2024:PHHC: 026376

Manoj @ Manju

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Mr. Akshay Rana, Advocate for the petitioner.

Mr. Randhir Singh, Addl. A.G., Haryana.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 226 of the Constitution of India is to issue writ in the nature of certiorari for quashing the impugned order dated 31.03.2023 (Annexure P2) passed by the Additional Chief Secretary to Government of Haryana, Jails Department, whereby case of the petitioner for pre-mature release, as per the Policy dated 12.04.2002 (Annexure P1) has been deferred. Petitioner further prays for issuance of writ in the nature of mandamus by directing the respondents to pre-mature release him, as he has already undergone sentence required under the Policy in question.

2. It is undisputed that petitioner was convicted vide judgment of conviction/order of sentence dated 09.02.2008/14.02.2008 passed by learned Addl. Sessions Judge, Chandigarh, in a case arising out of FIR No.158 dated 16.07.2006 under Sections 302/452/34 of IPC and Section 25 of the Arms Act, registered at Police Station Sadar, Bahadurgarh and was sentenced to undergo rigorous imprisonment for five years under Section 452 IPC with

fine of ₹500/-; life imprisonment under Section 302 read with Section 34 IPC with fine of ₹2500/-; and rigorous imprisonment for five years under Section 25 of the Arms Act with fine of ₹1000/-. Substantive sentences were directed to run concurrently. Appeal bearing CRA-153-DB-2008, against said judgment was dismissed by the Division Bench of this Court vide judgement dated 21.11.2012. Further appeal before Hon'ble Apex Court was dismissed on 1.12.2016. Presently, petitioner is confined in District Jail Jhajjar.

3. The contention of the petitioner is that as per Policy dated 12.04.2002 (Annexure P1) issued by the Government of Haryana, he is required to undergo actual sentence of 10 years and total sentence of 14 years by including remission period, and that he has already undergone the requisite sentence as per the Policy but his case has been deferred for one year for reconsideration by way of impugned order dated 31.3.2023.

4. Learned counsel for the petitioner contends that the order dated 31.03.2023 (Annexure P2) is liable to be quashed, as it has been passed without application of judicious mind and by ignoring the custody period of the petitioner. The relevant factors have not at all been taken into consideration and grave error has been committed by relying upon recommendations of the State Level Committee. Learned counsel contends that the case of the petitioner is squarely covered by the Policy dated 12.04.2022 (Annexure P-1) and so, he is required to be released prematurely.

5. The factual position regarding the custody period is not disputed by the respondents in their reply. However, the stand taken by the respondents is that on completion of 1 year deferment period; and 12 years 8 months and 20 days actual sentence; and 14 years 10 months total sentence as on 30.09.2023, the premature release case of the petitioner was placed before the

State Level Committee on 04.12.2023. The State Level Commission after considering the case of the petitioner again recommended to defer the premature release case of the petitioner for one year i.e. to reconsider after one year from 30.09.2023. On the aforesaid recommendation of the State Level Commission, the Government vide its order dated 29.11.2023 (Annexure R1) deferred the case of the petitioner for three years from 30.09.2023 and stated that his case will be reconsidered after three years from 30.09.2023, if otherwise found eligible. Justifying their action and by defending the impugned order dated 31.03.2023 (Annexure P2), the respondents have prayed for dismissal of the petition.

6. I have considered submissions of both the sides and have perused the record.

7. It is not in dispute that petitioner has been sentenced to undergo imprisonment for life vide judgment of conviction/order of sentence dated 09.02.2008/14.02.2008 passed by learned Addl. Sessions Judge, Jhajjar, in a case arising out of No.158 dated 16.07.2006 under Sections 302/452/34 of IPC and Section 25 of the Arms Act, registered at Police Station Sadar, Bahadurgarh, and that this judgment has attained finality.

8. The Financial Commissioner & Principal, Secretary to Government of Haryana, Jails Department issued a policy regarding premature release of life convicts. The Clauses 2(aa), (a) & (b) of the said policy, read as under: -

2 (aa) <i>Convicts whose death sentence has been commuted to life imprisonment and convicts who have been imprisoned for life having committed a heinous crime such as-</i> <i>(i) murder after rape repeated/chained rape/unnatural offences;</i> <i>(ii) murder with intention for ransom;</i> <i>(iii) murder of more than two persons;</i>	<i>Their cases may be considered after completion of 20 years actual sentence and 25 years total sentence with remissions.</i>
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(iv) persons convicted for second time for murder. (v) sedition with murder.	
2 (a) Convicts who have been imprisoned for life having committed a heinous crime such as: (i) Murder with wrongful confinement for extortion/robbery; (ii) Murder while undergoing life sentence; (iii) Murder with dacoity; (iv) Murder with offence under TADA Act, 1987; (v) Murder with untouchability (offence) Act, 1955; (vi) Murder in connection with dowry; (vii) Murder of a child under the age of 14 years; (viii) Murder of a woman; (iv) Murder after abduction of kidnapping; (x) Murder exhibiting brutality such as cutting the body into pieces of burning dragging the body as evident from judgment of the Court; (xi) Persistent bad conduct in the prison; (xii) Convicts who cannot for some definite reasons be prematurely released without danger to public safety; (xiii) Convicts who have been imprisoned for life under Section 120-B IPC (xiv) Any other crime that the State Level Committee considers to be 'heinous' for reasons to be recorded in writing.	The cases may be considered after completion of 14 years actual sentence including undertrial period; provided of such sentence including remissions is not less than 20 years.
2 (b) Adult life convicts who have been imprisoned for life but whose case are not covered under (aa) and (a) above and who have committed crime which are not considered heinous as mentioned in clause (aa) and (a) above.	The cases may be considered after completion of 10 years actual sentence including undertrial period provided that the total sentence including remissions is not less than 14 years.

9. In the present case, perusal of impugned order dated 31.3.2023 (Annexure P2) as well as subsequent order dated 11.12.2023 (Annexure R1), would reveal that case of the petitioner has been considered under Clause 2 (b) of the Policy dated 12,04.2002 but despite completion of requisite sentence as per policy, deferred both the times.

10. As per the order (Annexure R1) filed along with the affidavit of Shri Jagjit Singh, Inspector General of prisoners, Haryana, the period of sentence undergone by the petitioner upto 30.09.2023 is as under:-

	Years	Months	Days
Actual Sentence	12	08	20
Total sentence by including remission	14	10	00

11. No doubt that a convict has no fundamental right of seeking remission or shortening of sentence as a matter of right and the Government has discretionary power of remission to consider each individual case by keeping in view the relevant factors, but said discretion is to be exercised in a fair and non-discriminatory manner. Once a particular category of convicts have been placed in one category, they cannot be discriminated against themselves.

12. In the present case, perusal of the impugned order dated 31.03.2023 (Annexure P2) as well as subsequent order dated 11.12.2023 (*Annexure R1*), would reveal that the case of the petitioner for premature release has been rejected only by taking into consideration the recommendations of the State Level Committee made on the ground that life convict along with co-accused person had committed the murder of Sadhu Ram, who was wrestler, by firing shots with country made pistols on 15/16.07.2006, while deceased was sleeping in the courtyard, and that because of this reason, the premature release of the petitioner is deferred.

13. The case of the petitioner does not fall in the heinous category as referred in clause 2(aa) of the policy. Once it is found that the case of the petitioner falls in a particular category (category 'b') in the present case, no discrimination could have been made on the part of the Government.

14. In *Rashidul Jafar @ Chota Vs. State of Uttar Pradesh and another*[Writ Petition (Criminal) No.336 of 2019] decided on 06.09.2022, it has been held by Hon'ble Supreme Court as under: -

“The implementation of the policy for premature release has to be carried out in an objective and transparent manner as otherwise it would impinge on the constitutional guarantees under Articles 14 and 21. Many of these life convicts who have suffered long years of incarceration have few or no resources. Lack of literacy, education and social support structures impede their right to access legal remedies. Once the state has formulated its policy defining the terms for premature release, due consideration in terms of the policy must be given to all eligible convicts. The constitutional guarantees against arbitrary treatment and of the right to secure life and personal liberty must not be foreclosed by an unfair process of considering applications for premature release in terms of the policy.”

15. In *Rajkumar Vs. The State of Uttar Pradesh* [Writ Petition (Criminal) No.36 of 2022], decided on 06.02.2023, it has been observed by Hon'ble Supreme Court as under: -

“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.”

16. Consequent to the entire discussion of the factual matrix and legal position as above and taking into account the fact that petitioner has already undergone much more than the actual sentence as well as the total sentence by including remission period, as minimum required under the policy dated 12.04.2022 (Annexure P1), impugned order dated 31.03.2023(Annexure P2) as well as subsequent order dated 11.12.2023 (*Annexure R1*), cannot be sustained in law and as such, the same are hereby set aside.

17. The present petition is allowed. The respondent- authorities are hereby directed to consider the premature release case of the petitioner in light of its policy dated 12.04.2022 (Annexure P1)and also the observations made in this order. It is further directed that till the decision is taken by the competent authority regarding premature release of the petitioner as per this order, he be released on interim bail on furnishing requisite bonds to the satisfaction of the ld. CJM concerned.

26.02.2024

Vivek

(DEEPAK GUPTA)

JUDGE

Whether reasoned/speaking : *Yes*
Whether reportable : *No*