

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-5380-2023
Reserved on: 25.01.2024
Date of Decision : 05.02.2024

Rajesh @ Raje ...Petitioner

VERSUS

State of Haryana & Others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present : Mr. B.S. Rana, Senior Advocate, assisted by
Mr. Nayandeep Rana, Advocate for the petitioner.

Mr. Gurmeet Singh, Assistant Advocate General, Haryana

HARKESH MANUJA, J.

1. By way of present criminal writ petition filed under Articles 226/227 of the Constitution of India, prayer has been made for issuance of a writ in the nature of certiorari/mandamus for quashing the order dated 31.03.2023 (Annexure P-5) passed by Respondent No. 2 and for issuance of directions to the respondents to order the pre-mature release of the petitioner while considering his case under Clause (b) of Para No. 2 of the Policy for pre-mature release of life convicts dated 12.04.2002 (Annexure P-2).
2. Briefly stated, facts of the case are that the petitioner was convicted vide judgment dated 12.09.2002 and sentenced to undergo rigorous imprisonment for life along with fine of Rs.5000/-, by

Additional Sessions Judge, Rohtak in a trial emanating from FIR No.296 dated 26.05.1998 under Sections 148, 302, 120-B, 109, 216 read with Section 149 IPC and Section 25 of the Arms Act, registered at Police Station Civil Lines, Rohtak. The petitioner filed Criminal Appeal No. D-725-DB of 2002 against the judgment of conviction and order of sentence dated 12.09.2002, which was dismissed by this High Court vide judgment dated 18.10.2011.

2.1 At the time of filing of the petition, petitioner had undergone 15 years of actual sentence and 17 years and 8 months of total sentence and the petitioner sought premature release as per the policy dated 12.04.2002 issued by the State of Haryana. Admittedly, case of the petitioner was earlier considered by Respondent No.2 and was rejected vide order dated 11.01.2021 on the ground that the same was covered under Para 2(a)(x) of the premature release policy dated 12.04.2002 for which he was required to undergo 14 years actual sentence and 20 years of total sentence.

2.2 It is further averred in the petition that the said order was never conveyed by the Respondents to the petitioner and thus he filed CRWP No. 3032 of 2022 seeking his pre-mature release in the light of Para 2(b) of the Policy and in reply, the aforesaid order was disclosed by the respondents upon which, this Court disposed of the abovesaid writ petition vide order dated 16.02.2023 with specific directions to decide the case of the petitioner for pre-mature release

considering the applicability of various provisions as contained in Para No. 2 (a) or 2(b) of the policy.

2.3. In pursuance of order dated 16.02.2023 passed by this Court, the case for premature release of the petitioner was again considered by the State Level Committee and rejected vide order dated 31.03.2023 by observing that the petitioner had undergone actual sentence of 14 years 9 months and 16 days and total sentence of 17 years and 5 months whereas he was required to undergo 20 years of total sentence as required under Para No. 2 (a)(x) of the pre-mature release policy dated 12.04.2002.

2.4 By way of present criminal writ petition, the petitioner prayed for quashing the order dated 31.03.2023 and for issuance of directions to the respondents to order his pre-mature release under Clause (b) of Para No. 2 of the Policy dated 12.04.2002, while treated that the offence committed by him could not be treated as "Murder exhibiting brutality."

3. Ld. Senior counsel appearing for the petitioner contended that the rejection of the case of the petitioner was in violation of the policy for premature release dated 12.04.2002 as the same fell under Para 2(b) of the Policy as per which the petitioner was entitled to be pre-maturely released after undergoing 10 years of actual sentence including under trial period and 14 years of total sentence including remissions. He submitted that the respondents acted illegally and

arbitrarily while applying the provisions of Para No. 2 (a) (x) of the policy, which is reproduced as hereunder:

“2(a)(x) Murder exhibiting brutality such as cutting the body into piece or burning/dragging the body as evident from judgment of the Court.”

3.1 He further submitted that the case of the petitioner was wrongly considered under provisions of Para No. 2(a)(x) of the policy, which applied to the convicts who were imprisoned for life having committed a heinous crime such as murder exhibiting brutality such as cutting the body into pieces or burning, dragging the body as evident from the judgment of the court. He further submitted that in the present case, there was nothing to infer from the judgment that the body was cut or burned and therefore, respondents were wrong while recording that the present case was a murder exhibiting brutality and thus, the case of the petitioner did not fall under Para No. 2(a)(x) of the Policy.

3.2 In support of his contentions, learned Senior counsel placed reliance upon CWP No.5780 of 2018 titled as **“Yash Pal versus State of Haryana and others”** decided on 07.09.2018, where in a case of similar nature, this Court granted pre-mature release to the convict despite there being 18 injuries including 13 incised, 14 lacerated wounds and 1 injury to the brain of victim. He also placed reliance upon the judgment rendered by this Court in another similar case i.e. CRWP No. 1541 of 2016 titled as **“Krishan**

vs State of Haryana” wherein also the relief of premature release was granted to the convict despite 22 injuries on the person of the deceased. Learned Senior counsel while finally concluding his arguments submitted that the impugned order passed by respondent No.5 was liable to be quashed and the respondents were directed release the petitioner prematurely.

4. On the other hand, learned counsel for the State submitted that premature release could not be considered to be the right of a prisoner but rather was a concession granted by the State. He further submitted that perusal of the judgment dated 12.09.2002 clearly shows that the murder was committed by the petitioner in a brutal manner and injuries were caused on almost every part of the body of deceased. He again submitted that the conduct of the petitioner during jail was also found unsatisfactory as petitioner remained absconded from parole for a very long period of almost 6 years on two different occasions and during that period many other cases of murder, attempt to murder, criminal conspiracy etc were registered against him. In view of the above submissions, he submitted that there being no infirmity in the order date 31.03.2023 rejecting the prayer for premature release of the petitioner, thus, the petition is liable to be dismissed.

5. I have heard learned counsel for the parties and gone through the paper book, however, I do not find much substance in the submissions made on behalf of the petitioner.

6. Argument advanced by learned Senior counsel that in accordance with provision 2(a)(x) of the policy dated 12.04.2002, only those murders may be called brutal wherein, either the body has been cut into pieces or it has been burnt/dragged, does not behold any merit. It is a settled proposition of law that words like “includes” or “such as” provide an illustrative list and are not exhaustive. A contextual perusal of this clause clearly shows that in the case of present policy as well, instances provided by using the words “such as” are only illustrative in nature and in no way provide an exhaustive list of such instances.

7. Aforesaid observations are also supported by the judgment of a co-ordinate bench of this Court in "**Diwan Singh v. State of Haryana**", reported as 1990(3) R.C.R.(Criminal) 470, wherein also, it was observed that instructions are mere illustrations of some of the heinous crimes and the said definition does not cover the entire range of all the cases relating to commission of heinous offences. Relevant para from this judgment is reproduced here under:

“9. Faced With this situation, it was further submitted by the learned counsel for the petitioner that the offence allegedly committed in the instant case: would not be covered by the definition of the heinous crime in clause (d) of para 2 of the instructions (Annexure P- 1). A careful Perusal of clause (d) would indicate that the definition of a heinous crime in clause

(d) or Para 2 of the Government instructions (Annexure P-1) merely gives instances of some of the crimes such a dowry deaths bride burning, Spouse killing, and cases disclosing great depravity of character and greed, and, those involving extreme brutality, murder with rape, murder while undergoing life sentence, organised and professional crimes of heinous nature like dacoity with murder and life convicts, who, are dangerous and hardened criminal for example from cumulative sentences, persistent had conduct in the prison, and, includes those, who, could for some definite reasons be prematurely released without danger to the public safety. In my view the case in hand would be covered by the definition in clause (d) of para 2 of the instructions, inasmuch as the offence committed by the present petitioner discloses great depravity of character and greed. Even otherwise the instances of heinous crimes mentioned in clause (d) of para 2 of the instructions ate mere illustrations of some of the heinous crimes and the said definition does not cover the entire range of all the cases relating to commission of heinous offences.”

8. Similar interpretation was given by Patna High Court as well in **"Munilal Sharma v. State of Bihar"**, reported as 2022(2) PCCR 455, wherein it was observed that heinous offences mentioned in clause (a) of the subject policy were given only by way

of illustration and were not exhaustive. Relevant para from this judgment is reproduced here under:

“16. It would be relevant to take note of the amended Rule 529(iv) introduced by the notification dated 10.12.2002. The same talks about 'ineligibility for premature release'. The said clause further provides that the categories of convicted prisoners mentioned therein who are undergoing life sentence may not be considered eligible for premature release and the same at clause (a) speaks of 'prisoners convicted of the heinous offences such as rape, dacoity, terrorist crime etc'.. The very fact that by the said amendment and on introduction of Clause (iv) in Rule 529 of the Bihar Jail Manual the words used in clause (a) is 'heinous offences such as rape....etc', it goes without saying that the heinous offences mentioned in the said clause (a) have been given only by way of illustration and are not exhaustive. So far as the facts of the instant case is concerned, the petitioner was convicted for an offence under sections 376 and 302 of the Indian Penal Code for having raped and killed a 4 year old minor victim girl and for which he was sentence to death. Although in appeal his sentence was converted to a sentence of life imprisonment, nevertheless his conviction was

affirmed. In the opinion of this Court, the case of the petitioner would fall in the category (a) of Rule 529(iv) of a prisoner convicted of heinous offence and the petitioner would be ineligible for premature release.”

9. Accordingly, while examining whether a murder exhibits brutality or not, consideration cannot be limited only to the instances provided in clause 2(a)(x) and it has to be determined, depending upon the facts and circumstances of a particular case. In the specific facts of a case, brutality may be perceived from the cumulative circumstances and actions of the accused persons, even though the same may not be only limited to cutting the body into pieces or burning/dragging the body, therefore, this contention by the learned Senior Counsel cannot be sustained.

10. Judgments cited by learned Senior counsel cannot be made applicable in the present case as in those cases this proposition of law was not discussed whether a murder may be considered brutal even if its scope is not limited to the conditions specified in clause 2(a)(x), rather it was assumed that scope is limited only to these two conditions. Additionally, this Court in CWP-10011-2018, “**Jogender vs. State of Haryana & Others**”, decided on 06.12.2018, after taking into consideration above two judgments, observed that cutting/burning/dragging of the body are only some of the examples and whether murder is committed in a

brutal manner or not has to be determined from the facts and circumstances of that case. Relevant para of this judgment is reproduced hereunder:-

“Looking at the injuries, I am of the considered view that it is a brutal murder. Now the policy of the Government shows that under Clause 2(a)(xii), one of the heinous crime is described as under:-

“(xii) Murder exhibiting brutality such as cutting the body into pieces of burning/dragging the body as evident from judgment of the Court.”

It covers the murder exhibiting brutality such as cutting the body into pieces, burning or dragging the body as mentioned in the judgment of the Court. The cutting, dragging and burning of the body are some of the examples. It is seen from the judgment that the murder was committed with brutality.”

11. Accordingly, whether the murder was committed in a brutal manner has to be determined from the facts and circumstances of the present case. For that purpose, details as observed in the judgment dated 12.09.2002 vide which the petitioner was convicted, are required to be examined. In Para 5 of the judgment, postmortem details are given, which are reproduced hereunder:-

“5. Dr.Narender Singh PW-14 conducted the post mortem examination of body at 3.55 p.m. and in post-mortem noted the following injuries:-

1. Point of entrance, an opening with blackening of the margins 1 cm x 1 cm over right parieto temporal region 5 cm from right pinna.

2. *An opening 2 cm x 2 cm margins were everted and lacerated, 8 cm above left pinna and 10 cm from the mid line from left parietal region 1.5 cm behind from left eye-brow.*
3. *An opening .9 cm x 0.5 cm margins, blacked and scorching present, 5 cm below the left lobule of left ear over left region of the left of the neck.*
4. *An opening 0.9 cm x 0.5 cm in size with margins, blackned over the back, 5 cm from the midline on left side. There was 2" blackening around the wound.*
5. *An incised wound 4 cm x 2 cm in size 2 cm from the midline over back.*
6. *An incised wound 1 cm x 1 cm in size 3 cm from midline, 9 cm from left nipple.*
7. *An incised wound 1 cm x 0.5 cm in size 3 cm away from right nipple.*
8. *An incised wound 4 cm x 2 cm in side, 1.5 cm away from left nipple, 20 cm away from left shoulder.*
9. *An incised wound 3 cm x 2 cm over left abdomen, 6 cm from midline, 7 cm from umblicus, 130 cm from left heel.*
10. *Incised wound 8 cm x 3 cm, 14 cm away from midline over left abdomen.*
11. *0.5 cm incised wound over left illiac spine chest.*
12. *4 cm x 2 cm x 2 cm, 12 cm from midline, fat was coming out from the wound, 117 cm from left heel.*
13. *Incised wound 1.5 cm x 2 cm, 11 cm from midline over back, fat was coming out of the wound.*
14. *0.5 present. cm x 0.5 cm blackened spot over back was Wound of defence.*
15. *incised wound 4 cm x 1.5 cm over the outer aspect of right elbow, exposing the muscles.*
16. *Left middle finger, proximal part was clean cut.*

Track of bullet:-

There was clotted blood on the both cerebral hemispheres and laceration of brain matter in subdural and dural spaces.

2. *On dissection, there was clotted blood over left chest*

muscle after going through the intercostal space. The underlying lung was cut and the left ventricle cut and empty.

On opening the abdomen, the hole of the gut was found mostly perforated at places and was echymosed. The bullet was found in the abdomen and was taken out and sealed.

One bullet was found in the underwear.”

12. A perusal of the aforementioned details reveals that there was hardly any part on the body left in its width or from top to bottom, which did not have any injury. Deceased was murdered in broad daylight after a long chase in the University campus when the law-examinations were going on, which even reflected the premeditative intent of the accused. Terror spread by the accused persons including present petitioner was such that no student could dare to come to the rescue of the deceased and when the deceased was taken to the hospital, he was declared brought dead. In these circumstances, it can be easily perceived that the murder was committed by the petitioner in a brutal manner and the impugned order dated 31.03.2023 arriving on the same conclusion is not required to be interfered with. Even the learned Additional Sessions Judge while passing the judgment of conviction dated 12.09.2002, could not stop himself from making these observations in paragraph 68 of its decision. Relevant extract therefrom is reproduced hereunder:-

“....They did so brutally. No sane person would have invited danger/ death to his own life to intervene.”

13. Additionally, provision 4(i) of the policy also specifies that the conduct of the life convict during the last 5 years is also required to be taken into consideration while considering his premature release. A perusal of custody certificate dated 24.01.2024 shows that petitioner has been involved in multiple other FIRs as well on the charges of murder, attempt to murder, criminal conspiracy and offences under Arms and Excise Act and he has been even convicted in few of them. It can also not be denied that the conduct of the petitioner in jail was found unsatisfactory, as he remained absconded from parole for a very long period of almost 6 years on two different occasions, the details of which are as under:-

- i) *On 12.04.2003, he absconded from parole for 5 years and an FIR No. 114 dated 27.04.2003, U/s 8/9 HGCP Act, P.S. City Sonapat was registered against him, in which he was convicted and sentenced to imprisonment as already undergone on 21.10.2011.*
- ii) *On 17.08.2016, he absconded from parole for 11 months and 20 Date 57 days and an FIR No. 430 dated 03.09.2016, U/s 8/9 HGCP Act, P.S. Urban Estate, Rohtak was registered against him, in which he was convicted and sentenced to one year S.1. with fine of Rs. 500/- on 15.01.2019.*
- iii) *On 15.01.2021, a case FIR No. 12 dated 15.01.2021, U/s 42-A of Prisons Act, P.S. Bhondsi was registered against the petitioner regarding recovery of the mobile phone.*

Undisputedly, there have been FIRs against the petitioner under the provisions of IPC, when he was released on parole and

under Prisons Act, when he was in the jail and the last FIR against him is dated 15.01.2021 under jail offences. Therefore, subsequent conduct of the petitioner has not been found satisfactory and it cannot be safely inferred that petitioner has lost his potential of committing crime or there is no chance of future reoccurrence of committing crime by the petitioner. These circumstances further substantiate that the decision taken by the authorities vide impugned order dated 31.3.2023 is on the basis of relevant considerations.

14. In view of the discussion made above, no interference is warranted in the impugned order dated 31.03.2023. Consequently, finding no merit in the present petition, the same is hereby dismissed.

15. Pending miscellaneous application(s), if any, shall also stand disposed of.

05.02.2024
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned ?	Yes
Whether Reportable ?	Yes