



CRWP-8105-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No.226

Case No. : CRWP-8105-2023

Decided On : September 27, 2024

Shankar Bharti Petitioner

vs.

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

Present : Mr. Sandeep Verma, Advocate
for the petitioner.

Mr. Rajinder Singh Bhatta, DAG, Punjab.

Mr. R. K. Chaudhary, Advocate
as Amicus Curiae.

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GURBIR SINGH, J. :

1. Prayer in the present Criminal Writ Petition filed under Article 226 of the Constitution of India is for issuance of a writ in the nature of mandamus to consider and decide the premature release case of the petitioner as the petitioner has undergone actual sentence of more than 18½ years.

2. Learned counsel for the petitioner has submitted that the petitioner has already undergone more than 18 years of actual sentence awarded to him but his case for premature release is pending and is not being disposed of.

3. Learned State counsel, on the other hand, submits that the matter



regarding premature release of the petitioner is pending with the Secretary, Government of Punjab, Department of Jails, Chandigarh and his prayer for premature release is to be considered by State Level Committee, in view of the policy framed by the Government. It has further been submitted that the opinion of Presiding Officer has not been received yet. It is being debated whether the opinion is to be given only by the Presiding Officer, who had passed the judgment or opinion can also be given by his successor.

4. Learned Amicus Curiae has submitted that in view of the order dated 30.01.2023 passed by a Co-ordinate Bench of this Court in **COC-2020-2022** titled as **Pawan Kumar vs. D. K. Tiwari and another** and other connected matters, whereby directions were given to the respective State Governments to decide the premature release cases within the time limit of 3-6 months, as per their policy/instructions and during pendency of his case, convict be released on bail, subject to his furnishing bail bond/surety bond. He has also referred to a judgment passed by Constitution Bench of Hon'ble Supreme Court in the case of **Union of India vs. V. Sriharan @ Murugan and Ors.** reported as **2016 (7) SCC 1**, wherein it is observed that as per Section 432(2) Cr.P.C., order of suspension or remission should be guided by the opinion to be rendered by the Presiding Officer of the concerned Court. Further reliance has been placed on **Rajo @ Rajwa @ Rajendra Mandal vs. The State of Bihar & Ors.** reported as **2023 (4) R.C.R. (Criminal) 370** to contend that Presiding Judge's view is based on judicial record and the same is not to be mechanically followed by the concerned



5. I have heard learned counsel for the parties and perused the case file.

6. The petitioner was convicted in case FIR No.04 dated 11.01.2006, under Sections 302/201/202 IPC, registered at Police Station Sadar, District Kapurthala and was sentenced to undergo life imprisonment, with fine of Rs.5,000/- under Section 302 IPC and also to undergo RI for one year with fine of Rs.1,000/- under Section 201 IPC. However, all the sentences were ordered to run concurrently.

7. As per Custody Certificate, filed along with Affidavit dated 06.08.2024 of Arpanjot Singh, Additional Superintendent, Central Jail, Faridkot, the total custody period of the petitioner, as on 06.08.2024, is 18 years 06 months and 18 days.

8. The case of the petitioner is pending for the reason that view of the Presiding Officer has not been received. The Hon'ble Apex Court in the case of **Rajo @ Rajwa @ Rajendra Mandal** (*supra*) has observed as under :-

“17. All this is not to say that the presiding judge's view is only one of the factors that has no real weight; but instead that if the presiding judge's report is only reflective of the facts and circumstances that led to the conclusion of the convict's guilt, and is merely a reiteration of those circumstances available to the judge at the time of sentencing (some 14 or more years earlier, as the case may be), then the appropriate government should attach weight to this finding, accordingly. Such a report, cannot be relied on as



carrying predominance, if it focusses on the crime, with little or no attention to the criminal. The appropriate government, should take a holistic view of all the opinions received (in terms of the relevant rules), including the judicial view of the presiding judge of the concerned court, keeping in mind the purpose and objective, of remission.

18. *The views of the presiding judge, are based on the record, which exists, containing all facts resulting in conviction, including the nature of the crime, its seriousness, the accused's role, and the material available at that stage regarding their antecedents. However, post-conviction conduct, particularly, resulting in the prisoner's earned remissions, their age and health, work done, length of actual incarceration, etc., rarely fall within the said judge's domain. Another factor to bear in mind, is that the presiding judge would not be the same presiding judge who had occasion to observe the convict (at a much earlier point in time) and thus form an opinion. The presiding judge, at this stage, would only look into the record leading to conviction. This judicial involvement in executive decision making is therefore, largely limited to the input it provides regarding the nature of the crime, its seriousness, etc. Undoubtedly, even at the stage of sentencing, the judge ideally is to exercise discretion after looking at a wide range of factors relating to the criminal and not just the crime; but as noticed in numerous precedents that have dealt with sentencing in the commission of heinous crimes, this is unfortunately, often not the reality. Guidance*



has been offered by this court on how to mitigate this in recent years, but in this court's considered view, it is pragmatic to acknowledge that it will require time for our criminal justice system to incorporate, and uniformly reach such standards. In fact, earlier cases of conviction (such as the present one - in 2001), have an even lesser probability of a judicial record which reflects consideration of such multi-dimensional factors at the sentencing stage; the lack of which should not serve as an obstacle to the convict seeking release (after serving almost two decades, or more), erasing the reformatory journey they may have undertaken as a result of their long incarceration.

19. *It has been repeatedly emphasized that the aim, and ultimate goal of imprisonment, even in the most serious crime, is reformatory, after the offender undergoes a sufficiently long spell of punishment through imprisonment. Even while upholding Section 433A, in [Maru Ram v. Union of India \[1981\] 1 SCR 1196](#), this court underlined the relevance of post-conviction conduct, stating whether the convict,*

“Had his in-prison good behavior been rewarded by reasonable remissions linked to improved social responsibility, nurtured by familial contacts and liberal parole, cultured by predictable, premature release, the purpose of habilitation would have been served, If law--S. 433-A in this case--rudely refuses to consider the subsequent conduct of the prisoner and forces all convicts, good, bad and indifferent, to serve a fixed and arbitrary minimum it is an angry flat untouched by the proven criteria of reform.””



9. The Presiding Officer is to give opinion on the basis of judicial record and not otherwise. After such a long gap, the same Presiding Officer cannot be there. In these circumstances, the successor of the concerned Presiding Officer is supposed to give the opinion.
10. The petitioner has already undergone sentence of 18 years and 08 months. The ultimate goal of imprisonment is reformative. After such a long incarceration, the petitioner is entitled to be considered for premature release, without delay by the competent Authority. Since case of the petitioner for premature release is not being decided and is lying pending with the Authority, the same shall be decided within a period of three months positively. The petitioner is ordered to be released on interim bail for a period of three months, on furnishing bail bonds and surety bonds, to the satisfaction of concerned Chief Judicial Magistrate/Duty Magistrate.
11. The petition stands disposed off.
12. Pending applications, if any, shall stand disposed of along with this judgment.

September 27, 2024
monika

(GURBIR SINGH)
JUDGE

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.