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

CRWP-8688-2023

Reserved on : October 01, 2024

Pronounced on: October 16, 2024

Rajesh Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Hoshiar Singh Jaswal, Advocate
for the petitioner.

Mr.Tanuj Sharma, AAG, Haryana.

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RAJESH BHARDWAJ, J.(ORAL)

1. Present petition has been filed praying for quashing/setting aside the impugned order, dated 07.08.2023, Annexure P-4, passed by respondent No.1, whereby premature release case of the petitioner has been illegally ordered to be re-considered after completion of 14 years of actual sentence and 20 years of total sentence, whereas case of the petitioner is covered under Para 2(b) of the Policy/Instructions, dated 12.04.2002 (Annexure P-2), i.e. to undergo 10 years actual sentence and 14 years total sentence which has already been undergone by the petitioner.
2. It is contended by learned counsel for the petitioner that petitioner alongwith two others had faced the prosecution in FIR No.135, dated 13.11.2001 for commission of offence under Section 302 read with



Section 34 IPC, registered at Police Station Bilaspur, District Yamuna Nagar. On conclusion of the trial, the petitioner and the co-accused were convicted and sentenced to undergo life imprisonment under Section 302 read with Section 34 IPC whereas one of the accused was acquitted vide judgment and order, dated 09.05.2003 and 12.05.2003. He submits that the petitioner assailed the same by way of filing CRA-D-487-DB-2003, which was dismissed qua the petitioner whereas the appeal filed by co-convict was allowed vide order dated 23.08.2016. He submits that as on date there is no appeal or revision pending before this Court. He submits that case of the petitioner for premature release is covered by the Policy/Instructions, dated 12.04.2002, which was prevalent at the time of his conviction as held by Hon'ble Supreme Court of India in State of Haryana vs Jagdish and others 2010(2) RCR (Criminal) 464. He submits that as per Policy/Instructions, dated 12.04.2002, case of the petitioner is covered under Clause 2(b), which enumerates that cases may be considered after completion of ten years of actual sentence including the under-trial period provided that such sentence including remissions is not less than 14 years. It is submitted that as per custody certificate, dated 17.08.2023, the petitioner has undergone 10 years 04 months and 03 days of actual sentence and 14 years 10 months and 15 days of total sentence of imprisonment. He submits that petitioner is not involved in any other criminal case and he has never misused the concession of parole or furlough granted to him, as per custody certificate. It is submitted that for consideration of the premature release of the petitioner, the State Level Committee was constituted and case of the petitioner was considered on 30.06.2023 under Para 2(b) of the



Policy/Instructions, dated 12.04.2002. However, vide impugned order, dated 07.08.2023, the same has been ordered to be re-considered after completion of 14 years of actual sentence and 20 years of total sentence without assigning any reason. He submits that the petitioner has availed parole of more than two years and he never misused the said concession of parole in any manner. He submits that admittedly case of the petitioner was considered by the State Level Committee under Para 2(b) of the Premature Release Policy, dated 12.04.2002 but no reason has been assigned in not considering the case of the petitioner as per provisions of this clause. He submits that in an ordinary manner, the respondent/authorities have ordered to reconsider the case of the petitioner after completion of 14 years of actual sentence and 20 years of total sentence, which is totally in violation of provisions of the policy and the law settled. He relies upon the judicial precedent of Hon'ble Apex Court in **Sharafat Ali vs State of Uttar Pradesh and another**, passed in Writ Petition (Criminal)-439-2021 on 10.02.2022 and the judgments passed by this Court in **Shiv Kumar vs State of Haryana and others** 2023:PHHC: 163124 and **Manoj @ Manju vs State of Haryana and others** 2024: PHHC: 026373 and thus submits that the impugned order deserves to be set aside by directing the respondent/authorities to consider the case of the petitioner for premature release as per the provisions of Para 2(b) of the Policy/Instructions, dated 12.04.2002.

3. Per contra, learned State counsel has opposed the submissions made by learned counsel for the petitioner. He submits that as per Section 433-A Cr.P.C., a life convict has to undergo actual sentence of 14 years if he



is convicted in a case in which death penalty is one of the sentence. He submits that as per the settled principles of law in Maru Ram vs Union of India AIR 1980 SC 2147, no accused has a right to claim remissions as a matter of right, however, the only right of the convict is for consideration of his case for premature release. He submits that case of the petitioner was put up before the State Level Committee, who considered his case under para 2(b) of the Premature Release Policy, dated 12.04.2002, which is applicable in his case and hence the Committee rightly ordered to re-consider his case after completion of 14 years of actual sentence and 20 years of total sentence, as per Mandate of Section 433-A Cr.P.C. He submits that inadvertently Section 433-A Cr.P.C. has not been mentioned in the impugned order, dated 07.08.2023 and, thus submits that there being no merit in the petition, the same deserves to be dismissed.

4. Heard.

5. After hearing learned counsel for the parties and perusing the record, it is evident that the petitioner was convicted and sentenced by the trial Court vide judgment and order, dated 09.05.2003 and 12.05.2003. Appeal filed by him was dismissed by this Court vide order dated 23.08.2016. The petitioner filed a petition for consideration of his case for premature release. The respondent/State found that date of conviction of the petitioner is 12.05.2003 and thus, premature release Policy, dated 12.04.2002 would be applicable to his case. The State Level Committee considered the case of the petitioner under para 2(b) of this Policy, dated 12.04.2002. For analysis of arguments and counter-arguments raised before this Court, a perusal of para 2(b) of the Premature Release Policy, dated



12.04.2002, is relevant, which reads thus:-

“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.

Their cases may be considered after completion of 10 years actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 14 years.”

6. Perusal of para 11 of the reply shows the details of the sentence undergone by the petitioner, which reads as under:

Sr.No.	Particulars	Period	Years	Months	Days
1.	Undertrial period	From 22.11.2001 to 11.05.2003	01	05	20
2.	Conviction period	From 12.05.2003 to 04.08.2007 and From 02.11.2016 to 12.09.2023	11	01	04
	Total		12	06	24
3.	Parole Availed (-)	109 weeks and 04 days			
4.	Bail period (-)	From 07.08.2023 to 23.08.2023	00	00	15
5.	Actual Sentence=		10	04	22
6.	Earned Remission(+)		04	08	21
7.	Total sentence		15	01	13”

7. From the reading of the provisions of para 2(b) of the Policy, dated 12.04.2002, it is apparent that the convicts, who have been imprisoned for life but whose cases are not covered under Clause 2(aa) and (a), then the requisite condition for consideration of their premature release case is the completion of ten years of actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 14 years.

8. Admittedly, the actual sentence suffered by the petitioner as on 12.09.2023 is 10 years 04 months and 22 days whereas the total sentence including remissions is 15 years 01 month and 13 days. There is nothing on record to show that the petitioner has misused the concession of parole or furlough. Hence, case of the petitioner is not covered under Para 2(aa) and



(a) of the Policy, dated 12.04.2002. However, the respondent/State considered this case specifically under para 2(b) of Premature Release Policy, dated 12.04.2002 and has ordered for its reconsideration after completion of 14 years actual sentence and 20 years of total sentence. There is no denial to the fact that no convict has a right of claiming premature release as a matter of right. However, a convict has definitely a right for consideration of his case for premature release as per the policy of the State framed under the relevant provisions of the Statute, Sections 432 and 433-A Cr.P.C. and Articles 72 and 161 of the Constitution. There is no dispute regarding the law settled by the Hon'ble Supreme Court, as relied upon by the learned State counsel for consideration of the premature release case of the convicts. However, consideration of premature release case of the convicts has to be free from any arbitrariness. A perusal of the impugned order would reflect that case of the petitioner has been considered by the respondent/State under para 2(b) of the relevant Policy, dated 12.04.2002. The petitioner, admittedly, qualifies for his consideration under this Policy. However, the State has assigned no reason in ordering reconsideration of his case after completion of 14 years of actual sentence and 20 years of total sentence especially when his case is not covered under para 2(aa) and (a) of the Policy. Though learned State counsel has argued to justify the impugned order passed on the strength of Section 433-A Cr.P.C., however, it cannot be denied that the respondent/State has framed the policy under these relevant provisions only. The custody period of the petitioner would reflect that the petitioner has availed the parole of more than two years and has earned remissions of more than four and half years as well. There is nothing on



record to show that he has ever misused the concession of parole granted to him. Thus, in the overall consideration, this Court finds the impugned order passed to be a non-speaking order which assigned no reason or refer to any material for reaching the conclusion while considering the case of the petitioner as per mandate of para 2(b) of the premature release Policy, dated 12.04.2002.

9. Resultantly, present petition is allowed. Impugned order, dated 07.08.2023 is set aside. The respondent/State is directed to reconsider case of the petitioner as per the mandate of the Policy, dated 12.04.2002, on the anvil of the law settled and pass a fresh speaking order within three months from the date of this order.

October 16, 2024
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(RAJESH BHARDWAJ)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |