

...PETITIONER

...RESPONDENTS

Present: Mr. Brijender Kaushik, Advocate with
Mr. Vaibhav Vats, Advocate for the petitioner.
Mr. Akshay Jindal, Amicus Curiae
Mr. Vikas Bhardwaj, AAG, Haryana

The present petition has been filed under Article 226 of Constitution of India with a prayer for issuance of appropriate order or directions for setting aside the order dated 26.08.2022 (Annexure P-5), whereby the petitioner was denied pre-mature release which is in contravention of the policy dated 12.04.2002 (Annexure P-4).

2. Learned counsel for the petitioner *inter alia* contends that the perusal of the impugned order (Annexure P-5) would indicate that case of the petitioner was considered under the pre-mature release policy dated 04.02.1993. The State level committee was required to consider the case of the petitioner in the policy applicable at the time of his conviction and that would be the policy of year 2002 (Annexure P-4). Reliance in this regard has been placed upon Constitutional Bench in ***Raj Kumar vs. State of Uttar Pradesh, 2023 (SUP1) CutLT (Criminal) 522 Law Finder Doc Id # 2152548*** and ***State of Haryana and others versus Jagdish*** 2010 AIR (Supreme Court) 1690 to contend that the case of the petitioner can only be considered under the policy, which was applicable at the time of his conviction. Admittedly, the petitioner was convicted by the learned Sessions Judge, Ambala vide judgment of

conviction dated 20.10.2007 and order of sentence dated 22.10.2007 in case FIR No.189 dated 19.06.2004 registered under Sections 302/307/452/120-B of Indian Penal Code at Police Station Ambala Cantt., Haryana.

3. Mr. Akshay Jindal, Advocate, is appointed *amicus curiae* in the present case to assist this Court. Copy of complete paper book has been supplied to him. Learned amicus curiae submits that in view of the ratio of law laid down in the cases of **Raj Kumar** (*supra*) and **Jagdish** (*supra*), the case of the petitioner can only be considered in the policy applicable on the date of conviction of the petitioner.

4. Learned State counsel, however, refers to para 8 of the preliminary submissions of the reply filed on behalf of respondent Nos.1 to 4, to contend that the case of the petitioner was considered under the applicable policy of the year 2002, however, he could not controvert the fact that the perusal of the impugned order dated 26.08.2022(Annexure P-5) clearly indicates that the case of the petitioner was rejected after relying upon the pre-mature release policy dated 04.02.1993.

5. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance and in view of the ratio of law laid down in **Raj Kumar** (*supra*) and **Jagdish** (*supra*), the impugned order dated 26.08.2022(Annexure P-5) is hereby set aside and the official respondents are directed to consider the case of the petitioner afresh strictly in accordance with the policy applicable at the time of his conviction, preferably within a period of 08 weeks.

January 16, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |