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rejected vide impugned order dated 07.08.2023 (Annexure P-1). It is further contended that case of the petitioner for premature release is squarely covered by the policy dated 13.08.2008 (Annexure P-3) floated by the Govt. of Haryana and he fulfills the criteria laid down in the aforementioned policy. The competent authority passed the impugned order by rejecting the case of the petitioner for his premature release without any plausible and justifiable cause.

4. Per contra, learned State counsel justifies deferment of case of the petitioner by submitting that he is an accused of grave and heinous offence, however, she could not controvert the fact that the petitioner fulfills the conditions mentioned in the policy (Annexure P-3) of the relevant period, which is applicable in the case of the petitioner.

5. The petitioner has undergone actual sentence of 15 years, 07 months and 07 days and which includes remission of 04 years.

6. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, this Court is of the opinion that the policy instituted by the State for premature release is equally applicable to all convicts and directly impacts their fundamental rights as enshrined under Articles 14, 19 and 21 of the Constitution of India. Once eligible to be considered for premature release according to the applicable policy, the State cannot deny him this concession without recording due reasons for the same. The State is duty bound to act fairly and to proceed according to the policy formulated by it in a manner that does not discriminate between similarly situated persons in absence of an intelligible differentia. Non-arbitrariness is a facet in Article 14 of the Constitution of India and the State and all its agencies are required to abide by it. The State cannot indulge in cherry picking and only



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provide the concession of premature release to a select few out of the pool of similarly situated convicts and such approach is highly inequities.

7. A two Judge Bench of the Hon'ble Supreme Court in ***Joseph Vs. The State of Kerala and others, Writ Petition (Criminal) No.520 of 2022 decided on 21.09.2023, 2023 SCC OnLine SC 1211***, speaking through Justice S. Ravindra Bhat, has held as under:-

“28. To issue a policy directive, or guidelines, over and above the Act and Rules framed (where the latter forms part and parcel of the former), and 14 undermine what they encapsulate, cannot be countenanced. Blanket exclusion of certain offences, from the scope of grant of remission, especially by way of an executive policy, is not only arbitrary, but turns the ideals of reformation that run through our criminal justice system, on its head. Numerous judgments of this court, have elaborated on the penological goal of reformation and rehabilitation, being the cornerstone of our criminal justice system, rather than retribution. The impact of applying such an executive instruction/guideline to guide the executive's discretion would be that routinely, any progress made by a long-term convict would be rendered naught, leaving them feeling hopeless, and condemned to an indefinite period of incarceration. While the sentencing courts may, in light of this court's majority judgment in Sriharan (supra), now impose term sentences (in excess of 14 or 20 years) for crimes that are specially heinous, but not reaching the level of 'rarest of rare' (warranting the death penalty), the state government cannot – especially by way of executive instruction, take on such a role, for crimes as it deems fit.

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37. Classifying - to use a better word, typecasting convicts, through guidelines which are inflexible, based on their crime committed in the distant past can result in the real danger of



overlooking the reformative potential of each individual convict. Grouping types of convicts, based on the offences they were found to have committed, as a starting point, may be justified. However, the prison laws in India - read with Articles 72 and 161 - encapsulate a strong underlying reformative purpose. The practical impact of a guideline, which bars consideration of a premature release request by a convict who has served over 20 or 25 years, based entirely on the nature of crime committed in the distant past, would be to crush the life force out of such individual, altogether. Thus, for instance, a 19 or 20 year old individual convicted for a crime, which finds place in the list which bars premature release, altogether, would mean that such person would never see freedom, and would die within the prison walls. There is a peculiarity of continuing to imprison one who committed a crime years earlier who might well have changed totally since that time. This is the condition of many people serving very long sentences. They may have killed someone (or done something much less serious, such as commit a narcotic drug related offences or be serving a life sentence for other non-violent crimes) as young individuals and remain incarcerated 20 or more years later. Regardless of the morality of continued punishment, one may question its rationality. The question is, what is achieved by continuing to punish a person who recognises the wrongness of what they have done, who no longer identifies with it, and who bears little resemblance to the person they were years earlier? It is tempting to say that they are no longer the same person. Yet, the insistence of guidelines, obdurately, to not look beyond the red lines drawn by it and continue in denial to consider the real impact of prison good behavior, and other relevant factors (to ensure that such individual has been rid of the likelihood of causing harm to society) results in violation of Article 14 of the Constitution. Excluding the relief of premature release to prisoners



who have served extremely long periods of incarceration, not only crushes their spirit, and instils despair, but signifies society's resolve to be harsh and unforgiving. The idea of rewarding, a prisoner for good conduct is entirely negated.

38. In the petitioner's case, the 1958 Rules are clear – a life sentence, is deemed to be 20 years of incarceration. After this, the prisoner is entitled to premature release. The guidelines issued by the NHRC pointed out to us by the counsel for the petitioner, are also relevant to consider - that of mandating release, after serving 25 years as sentence (even in heinous crimes). At this juncture, redirecting the petitioner who has already undergone over 26 years of incarceration (and over 35 years of punishment with remission), before us to undergo, yet again, consideration before the Advisory Board, and thereafter, the state government for premature release - would be a cruel outcome, like being granted only a salve to fight a raging fire, in the name of procedure. The grand vision of the rule of law and the idea of fairness is then swept away, at the altar of procedure - which this court has repeatedly held to be a “handmaiden of justice”.

8. A Full Bench of the Hon’ble Supreme Court in ***Rajkumar Vs. The State of Uttar Pradesh AIR 2023 SC 265***, speaking through Chief Justice Dhananjaya Y. Chandrachud, has held as under:

“13. 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.

9. A two Judge bench of the Hon'ble Supreme Court in ***State of Haryana Vs. Jagdish, AIR 2010 SC 1690***, speaking through Justice Dr. B.S. Chauhan laid down the parameters to consider while deciding upon the question of premature release:

“38. At the time of considering the case of pre-mature release of a life convict, the authorities may require to consider his case mainly taking into consideration

- 1. whether the offence was an individual act of crime without affecting the society at large;*
- 2. whether there was any chance of future recurrence of committing a crime;*
- 3. whether the convict had lost his potentiality in committing the crime;*
- 4. whether there was any fruitful purpose of confining the convict any more;*
- 5. the socio-economic condition of the convict's family and other similar circumstances.” (enumeration added)*

10. While the petitioner has committed grave and serious offences, once a duly enacted policy is in existence, it must be honoured and applied to each case in its letter and spirit. The theory of reformation and rehabilitation that emerged in the 18th century aims at separating the criminal from the crime and compels us to look beyond the one fateful act committed by him. In a civilized society like ours, it would be truly unfortunate, if an offender is not



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given the opportunity to realize and fully fathom his mistake and channel that awareness into making fruitful contributions in society. The peno-correctional institutes must not only be looked at as a place, where punishment is carried out, but also a place of rehabilitation. The criminal justice dispensation system must be guided by the idea of allowing the offender to rectify his wrong and reintegrate into the society as a law abiding member once the sentence is served.

11. This Court in ***Pohlu @Polu Ram Vs. State of Haryana and others, CRWP No.8232 of 2022, decided on 05.02.2024***, while dealing with deferment of cases of the accused for premature release, has held as under: -

“The entire edifice of exercise of judicial or quasi-judicial power rests on the foundation of giving reasoned and detailed orders. It is a fundamental principle of natural justice and ensures that there is proper and due application of mind while exercising said power. Therefore, the practice of arbitrarily categorising convicts as threats to society or indiscriminately deferring their cases for premature release needs to be strongly discouraged. It is expedient that the competent authority does not act in a ritualistic fashion and application of mind is discernible.”

12. It would be naive to hope for a society without crime, however, it would be in line with the welfarist approach of State to make an attempt towards rehabilitation of offenders and allow them to reshape themselves as a functional member of the society. The overarching goal of punishment is deterrence and the sentiment must not be weaponised to glamorise savage justice. People from all walks of life hold the idea of liberty close to their heart and have historically done everything in their power to not part from it. For a



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convict serving a life sentence, liberty has to be the most precious of possessions. It should not be assumed that all convicts when released will unleash revenge onto their prosecutors. The convict's conduct in jail, state of mind, gravity of the offence, social background and behaviour while on parole must be duly considered before deciding upon the question of his premature release. In the words of Justice Krishna Iyer, "Social Justice is the signature tune of our Constitution and the little man in peril of losing his liberty is the consumer of Social Justice."

13. In view of the above, impugned order dated 07.08.2023 (Annexure P-1) is set aside and the competent authority is directed to consider and decide case of the petitioner afresh, strictly in accordance with applicable policy and also in view of ratio of law laid down by the Hon'ble Supreme Court in ***Jagdish's case (supra)*** and by this Court in ***Pohlu @Polu Ram's case (supra)*** within a period of six weeks from the date of receipt of certified copy of this order.

14. With the aforesaid observations made and directions issued, present petition is disposed of.

(HARPREET SINGH BRAR)
JUDGE

25.09.2024

Neha

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