

CRWP-10709-2022

276 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRWP-10709-2022

Date of decision: 05.02.2024

Harbans Singh

.....Petitioner

Versus

State of Punjab and others

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Rajpreet Brar, Advocate
for the petitioner

Mr. Sandeep Kumar, DAG Punjab

Mr. Akshay Jindal, Advocate
Amicus Curiae

Harpreet Singh Brar, J. (Oral)

1. The present petition is filed under Article 226 of the Constitution of India praying for issuance of writ in the nature of mandamus directing the respondents to set aside impugned order dated 22.09.2022 and direct the respondents to reconsider and decide the petitioner's case for premature release.

2. The petitioner was convicted by the learned Sessions Court, Amritsar vide judgment dated 30.11.2012 in FIR No. 90 dated 11.07.2007 registered under Sections 302, 307, 326, 325, 324, 323, 148, 149 of the IPC at Police Station Rajasansi, District Amritsar, and sentenced to undergo life imprisonment. The appeal preferred by the petitioner against the judgment of conviction and order of sentence has been disposed of by this Court vide judgment dated 31.08.2018.

3. Learned counsel for the petitioner submits that the petitioner has undergone actual sentence of more than 11 years and 16 years of total

CRWP-10709-2022

sentence, which includes 5 years of remission. The case of the petitioner is covered under category C of the Instructions dated 08.08.2011 issued by the Punjab Government which requires 10 years of actual imprisonment and 14 years of actual imprisonment with remission for a case to be considered for premature release. However, his request was denied by the jail authorities vide impugned order dated 22.09.2022 stating that the case of the petitioner does not fall within the formula prescribed for calculating actual sentence i.e. Actual Sentence = (Custody during Trial + Custody after Conviction)-Parole Period as the petitioner has only undergone 6 months 6 days of actual sentence.

4. Per contra learned State counsel submits that the petitioner does not fulfil the criterion of quantum of actual period of incarceration as per the formula prescribed by the State Government.

5. Mr. Akshay Kumar Jindal, Advocate, who was appointed as amicus curiae, submits that the State must abide by the terms of policy, which was in force on the date of conviction and it is not open to the State to adopt an arbitrary yardstick for picking up cases for premature release. In support of his contention, he relies upon the judgment passed by the Honble Supreme Court in **Rajkumar Vs. The State of Uttar Pradesh AIR 2023 SC 265** and **State of Haryana Vs. Jagdish AIR 2010 SC 1690**.

6. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the petitioner has been convicted under Section 302 of the IPC and sentenced to undergo life imprisonment. As per custody certificate supplied by the State, the petitioner has undergone actual sentence of 7 years 3 months 24 days and availed parole for 3 years 10 months

21 days. He has undergone a total sentence of 13 years 4 months 27 days, including remission and furlough.

7. The petitioner is entitled to have his case considered for premature release in terms of policy dated 08.08.2011 issued by the Government of Punjab, as it was the policy occupying the field at the time of his conviction. The formula mentioned above, which requires the parole duration to be subtracted when calculating the actual period of sentence undergone, was introduced on 16.07.2020 and cannot be applied to the petitioner's case retrospectively. Since the policy dated 08.08.2011 is silent about the method of calculation, the parole period must be included in the actual sentence undergone. Accordingly, the actual undergone period by the petitioner comes out to be 11 months 2 months 10 days, which makes him eligible for premature release in terms of policy dated 08.08.2011. A Full Bench of the Honble Supreme Court in **Rajkumar's case(supra)**, 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.”

A two Judge bench of the Honble Supreme Court in **Jagdish's**

case(supra), speaking through Justice B.S. Chauhan, has held as under:

“43. The right of the respondent prisoner, therefore, to get his case considered at par with such of his inmates, who were entitled to the benefit of the said policy, cannot be taken away by the policy dated 13.08.2008. This is evident from a bare perusal of the recitals contained in the policies prior to the year 2008, which are referable to Article 161 of the Constitution. The High Court, therefore, in our opinion, was absolutely justified in arriving at the conclusion that the case of the respondent was to be considered on the strength of the policy that was existing on the date of his conviction. State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for pre-mature release would be considered after serving the sentence, prescribed in the short sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "life" for pre-mature release, he should be given benefit thereof.”

8. Keeping in view the facts and circumstances of the case, the petitioner cannot be denied the benefit of the policy applicable on the date of his conviction and therefore, the official respondents are directed to consider the case of the petitioner for premature release in accordance with the applicable policy dated 08.08.2011 within a period of two months from the date of receipt of certified copy of this order.

9. The instant petition stands disposed of in above terms.

(HARPREET SINGH BRAR)
JUDGE

05.02.2024

Ajay Goswami

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