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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRWP-1562-2019
CRWP-1538-2024
Date of decision: 01.04.2024

CRWP-1562-2019

Amar Singh...Petitioner

Versus

State of Haryana and Others...Respondents

AND

CRWP-1538-2024

Amar Singh...Petitioner

Versus

State of Haryana and Others...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Karandeep Singh, Advocate for
Mr. R.S. Dhull, Advocate for the petitioner.

Mr. Viney Phogat, DAG, Haryana.

KARAMJIT SINGH, J. (ORAL)

1. This order will dispose of the afore-titled connected petitions filed by the petitioner seeking his premature release.
2. CRWP-1562-2019 is filed by the petitioner seeking quashing of order dated 03.04.2017 vide which the case of petitioner for premature release was wrongly rejected on the ground that the same falls under para 2 (a) (xii and xiv) of the policy dated 12.04.2002 formulated by State of Haryana.

3. CRWP-1538-2024 is filed by the petitioner seeking setting aside of order dated 29.11.2023 whereby the case of premature release of the petitioner was deferred for period of another 2 years by the competent authority.

4. Counsel for the petitioner contends that the petitioner was convicted and sentenced to life imprisonment under Section 302 read with Section 120-B IPC by the Court of Additional Sessions Judge, Faridabad vide judgment and order dated 20/23.12.2006. The counsel for the petitioner further submits that the case of the petitioner is covered under policy dated 12.04.2002 which is relating to premature release of life convicts. The counsel for the petitioner further submits that the case of the petitioner covered under aforesaid policy of Haryana government was earlier rejected vide order dated 03.04.2017 without assigning any reason and subsequently, vide order dated 29.11.2023 which is also a non speaking order. It is further submitted that petitioner has challenged both the aforesaid orders. The counsel for the petitioner further submits that vide order dated 29.11.2023, the case of the petitioner was rejected simply on the ground that victim was an advocate and the petitioner/life convict is having criminal background and he caused attack on the institution of criminal justice system and letting of such convicts lightly can have demoralizing effect on the institution. The counsel for the petitioner further submits that no such distinction is provided in policy dated 12.04.2002 and such a discrimination made by the competent authority while passing order dated 29.11.2023 is unwarranted. The counsel for the petitioner further contends that both the petitions could be disposed of with necessary direction to the competent authority to

reconsider the case of petitioner for premature release in the light of the orders dated 09.12.2023 and 05.02.2024 passed by the co-ordinate Bench in CRWP-4366-2022 titled as Shiv Kumar Vs. State of Haryana and Others and CRWP-10709-2022 titled as Harbans Singh Vs. State of Punjab and Others respectively, in a time bound manner.

5. Reply filed by the State is taken on record in both the petitions.

6. The State counsel while supporting the orders dated 03.04.2017 and 29.11.2023 submits that both theses orders are sustainable and are passed in accordance with law. The State counsel further submits that in the present case, the victim was an advocate and thus, the murder committed by the petitioner comes under category of heinous crime and the competent authority rightly deferred the case of petitioner for a period of next two years vide order dated 29.11.2023.

7. I have considered the submissions made by counsel for the parties.

8. From the perusal of impugned order dated 03.04.2017, it appears that as on 05.11.2016 total period of actual sentence undergone by petitioner was 10 years, 10 months and 17 days and total sentence undergone including remissions was 14 years, 2 months and 6 days. Further from the perusal of order dated 29.11.2023, it is evident that as on 31.03.2023 total period of actual sentence undergone by the petitioner was 14 years, 1 months and 26 days and total sentence undergone including remissions was 21 years, 6 months and 6 days and thus, the case of the petitioner is apparently covered under Haryana Government Policy dated 12.04.2002 as on today. From the perusal of policy dated 12.04.2002,

crimes falling in the heinous category have been separated and put in clause (a) and (b) of the policy and for such crimes falling in the heinous category, the premature release case is to be considered after completion of 20 years of actual sentence and 25 years of total sentence with remissions. On the other hand for all the other life convicts, their cases for premature release are to be considered on completion of 14 years of actual sentence and 20 years of total sentence including remissions. There is no separate category of heinous crime in case victim is an advocate. Any such distinction made by the competent authority while passing order dated 29.11.2023 without assigning any specific reasons is to be considered as arbitrary and discriminatory.

9. In Writ petition (criminal) No.36 of 2022 titled as Raj Kumar Vs. State of Uttar Pradesh decided on 06.02.2023, the Hon'ble Supreme Court observed as under:-

“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 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 legal position as it stands on the date of conviction subject to a more beneficial regime being provided in terms of a subsequent policy determination. The provisions of 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 a situation where persons lacking resources, education and awareness suffer the most.”

10. The co-ordinate Bench of this Court in **Shiv Kumar's case**

(supra) and **Harbans Singh’s case** (supra) while placing reliance upon the ratio laid down by Hon’ble Apex Court in **Raj Kumar’s case** (supra) gave directions to consider the cases of the concerned convicts for their premature release in accordance with the relevant policy of the State government within a fixed time frame.

11. In the light of the above, the impugned order dated 29.11.2023 cannot be sustained and as such the same is hereby set aside. CRWP-1538-2024 is hereby allowed. The respondent/authorities are hereby directed to reconsider the premature case of the petitioner in the light of policy dated 12.04.2002 of Haryana Government within a period of 2 months from the date of receipt of certified copy of this order.

12. CRWP-1562-2019 is dismissed as at the relevant time when order dated 03.04.2017 was passed by the competent authority, the petitioner had not completed the minimum custody period of actual sentence and total sentence as per policy dated 12.04.2002 and thus, the competent authority rightly came to conclusion that the case of the petitioner will be reconsidered after completion of 14 years of actual sentence and 20 years total sentence as per policy dated 12.04.2002.

01.04.2024
Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No