

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRWP-11630-2023
Date of decision: 05.02.2024

Raj Pal

.....Petitioner

Versus

State of Punjab and others

....Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. R.S. 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 consider and decide the petitioner's case for premature release.
2. The petitioner was convicted by the learned Sessions Court, Faridkot vide judgment dated 14.03.2005 in FIR No. 167 dated 08.11.2002 registered under Sections 302, 364, 377, 201 of the IPC at Police Station City Kitkapura, District Faridkot, and sentenced to undergo life imprisonment. The appeal preferred by the petitioner against the judgment of conviction and order of sentence has been dismissed by this Court vide judgment dated 15.10.2008.
3. Learned counsel for the petitioner submits that the petitioner has

undergone actual sentence of more than 12 years and 19 years of total sentence, which includes 7 years of remission. The petitioner has displayed good conduct inside the jail and while on parole. He has also not committed any jail offence. The case of the petitioner is covered by Instructions dated 08.07.1991 issued by the Punjab Government which requires 12 years of actual imprisonment and 18 years of actual imprisonment with remission for a case to be considered for premature release. A legal notice dated 31.10.2023 was sent by the petitioner to the jail authorities requesting them to initiate proceedings for his premature release. However, his case is yet to be considered by the respondents.

4. Per contra learned State counsel submits that the case of the petitioner falls under Category 'B' (heinous offences) as he has been convicted for sodomy and murder of a 6 years old child. The petitioner does not fulfil the criterion of quantum of actual period of incarceration required 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 21 years 2 months 26 days and availed 2 years 7 months 17 days of parole.

7. The petitioner is entitled to have his case considered for premature release in terms of policy dated 08.07.1991 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 08.07.1991 is silent about the method of calculation, the parole period must be included in the actual sentence undergone. Accordingly, the total undergone period by the petitioner comes out to be 18 years 2 months 26 days, and actual sentence as 15 years 10 months 1 days which makes him eligible for premature release in terms of policy dated 08.07.1991. 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.”

A Co-ordinate Bench of this Court in ***Kamal Kant Tiwari v. State of Punjab and others 2014(2) R.C.R(Criminal) 940***, speaking through Justice Surinder Gupta, made the following observations:

“10. This practice of the jail authority of not forwarding his case to the State Government for consideration is to be depreciated

because they have limited role of forwarding a case to the competent authority for consideration along with all the facts available on file. They cannot assume the role of deciding as to whether the convict's case can be allowed or not. Respondent No. 2 must look into this aspect and take immediate and appropriate action to avoid the recurring of such lapses in future.”

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 pre-mature release in accordance with the applicable policy dated 08.07.1991 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.

February 05, 2024

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(HARPREET SINGH BRAR)

JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No