**CRWP-11673-2023****-1-****IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.****Sr. No.275****Case No. : CRWP-11673-2023****Decided On : November 12, 2024**

Manjit Singh @ Binu

.... Petitioner

vs.

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE GURBIR SINGH.

* * *

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

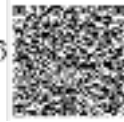
Mr. R. S. Bhatta, DAG, Punjab.

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GURBIR SINGH, J. :

1. The petitioner has approached this Court by way of the present Criminal Writ Petition, filed under Article 226/227 of the Constitution of India, praying for issuance of direction to the respondents to initiate and consider the premature release case of the petitioner as he has already undergone more than the sentence period required for considering his case for grant of premature release.

2. Admittedly, petitioner and another co-accused namely Ravdeep Kaur were convicted vide judgment dated 28/30.03.2012, passed by the Court of learned Additional Sessions Judge, Chandigarh, in case FIR No.321 dated 14.10.2005, under Section 302/34/109/115/120-B IPC, registered at Police Station Civil Lines, Patiala and were sentenced to undergo imprisonment for life, which was ordered to be extended to their full life,



and also to pay fine of Rs.50,000/- each. At present, the petitioner is lodged at Central Jail, Patiala. Aggrieved against the aforesaid judgment of conviction and order of sentence, the petitioner preferred Criminal Appeal before this Court bearing No.CRA-D-995-DB-2012, which is still pending before this Court for adjudication.

3. Learned counsel for the petitioner has contended that the petitioner has already undergone more than the sentence required to be undergone for considering his case for premature release. In this regard, it has been submitted that the Punjab Government has issued instructions dated 08.08.2011 (Annexure P-1) regarding premature release of 'life convicts' while exercising powers under Sections 432, 433 and 433-A Cr.P.C. and Article 161 of the Constitution of India, wherein it is provided that case of life convict could be considered after undergoing 10 years of actual sentence and 14 years with remission. It has further been submitted that the petitioner repeatedly requested the jail authorities to initiate his case for premature release but when his request was not acceded to, he sent legal notice dated 03.11.2023 (Annexure P-2) to the jail authorities through an Advocate. Reply to the said legal notice dated 17.11.2023 (Annexure P-3) was sent by the Superintendent, Central Jail, Patiala, wherein it was conveyed that the petitioner was not eligible for premature release as per the Punjab Government Policy dated 08.07.1991. However, it has been argued by learned counsel for the petitioner that a number of convicts have already been released by the concerned Authorities on the basis of Government Policies but case of the petitioner has not even been considered till date. In

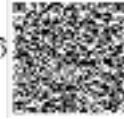


addition to this, even case of co-convict Ravdeep Kaur has been considered by a Co-ordinate Bench of this Court and she was directed to be released on interim bail till final decision is taken by the Authorities on the issue of her premature release, subject to final outcome of her appeal. So, case of the petitioner be also considered for pre-mature release as he his actual undergone period comes to more than 15 years (as undertrial and after conviction), even if remission period of 03 years and about 04 months is excluded.

4. On the other hand, learned State counsel has submitted that as per the premature release policy of the Government of Punjab, there is no provision to grant the benefit of premature release for such prisoners, where the Court has awarded punishment till death or imprisonment till natural life and therefore, premature release case of the petitioner cannot be initiated. Learned State counsel has also submitted that due to pendency of appeal filed by the petitioner against his conviction and sentence, which is to be considered by Hon'ble Division Bench of this court, present petition is not maintainable and the same deserves dismissal. However, he has fairly admitted that co-convict of the petitioner was released on interim bail vide order dated 03.10.2023, passed by the Court of learned Additional Chief Judicial Magistrate (Duty), Patiala.

5. I have heard the arguments advanced by both the parties and perused the case file.

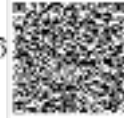
6. In the case of Union of India vs. V. Sriharan @ Murugan and others reported as 2016 (7) SCC 192, a Constitutional Bench of Hon'ble



Supreme Court, after taking note of the distinctive features in the two enactments i.e. Indian Penal Code and the Code of Criminal Procedure, has observed as under :-

“101. Once we steer clear of such distinctive features in the two enactments, one substantive and the other procedural, one will have no hurdle or difficulty in working out the different provisions in the two different enactments without doing any violence to one or the other. Having thus noted the above aspects on the punishment prescription in the Penal Code and the procedural prescription in the Code of Criminal Procedure, we can authoritatively state that the power derived by the Courts of law in the various specified provisions providing for imposition of capital punishments in the Penal Code such power can be appropriately exercised by the adjudicating Courts in the matter of ultimate imposition of punishments in such a way to ensure that the other procedural provisions contained in the Code of Criminal Procedure relating to grant of remission, commutation, suspension etc. on the prescribed authority, not speaking of similar powers under Articles 72 and 162 of the Constitution which are untouchable, cannot be held to be or can in any manner overlap the power already exercised by the Courts of justice.

102. In fact, while saying so we must also point out that such exercise of power in the imposition of death penalty or life imprisonment by the Sessions Judge will get the scrutiny by the Division Bench of the High Court mandatorily when the penalty is death and invariably even in respect of life imprisonment gets



scrutinized by the Division Bench by virtue of the appeal remedy provided in the Code of Criminal Procedure. Therefore, our conclusion as stated above can be reinforced by stating that the punishment part of such specified offences are always examined at least once after the Sessions Court's verdict by the High Court and that too by a Division Bench consisting of two Hon'ble Judges.

103. *That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial Court and confirmed by the Division Bench of the High Court, the concerned convict will get an opportunity to get such verdict tested by filing further appeal by way of Special Leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed.*

104. *We, therefore, reiterate that, the power derived from the Penal Code for any modified punishment within the punishment provided for in the*



Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other Court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court.”

7. In the case of **Savitri vs. State of Haryana and others** reported as **2020(3) RCR (CrL.) 182**, before Division Bench of this Court, petitioner's application for temporary release/parole had been rejected by Divisional Commissioner, Hisar on the ground that Trial Court i.e. court of Additional Sessions Judge, Hisar had awarded the petitioner sentence of imprisonment for life i.e. whole of her natural life without any remission, consequent to her conviction for the offences under Sections 302, 343 and 120-B of the IPC. This Court considered as to whether the trial Court could have passed such a sentence and whether the authorities would be precluded from considering any such application for release on parole till the appeal is decided. This Court held as under :-

“9. The question whether the trial Court could have passed such a sentence would undoubtedly be one of the questions that would arise for consideration in the Petitioner's criminal appeal against her conviction and sentence which is pending before this Court. However, it is unlikely that the said appeal, which would have to be heard with the connected appeals of



her co-convicts, can be taken up for hearing in the near future. Further, this would mean that till such question is decided, the authorities would be precluded from considering any of her applications for release on parole. It would be unreasonable, in the circumstances, for the examination of this question to be postponed to the hearing of the appeal, particularly since, as will be seen hereafter, the legal position in this regard is clear.”

8. This Court after referring to paragraphs 103 to 105 of the judgment titled V. Sriharan @ Murugan and others (*supra*), held as under :-

“Thus, after the judgment of the Constitution Bench of the Supreme Court in V. Sriharan (supra), it is not open to a court inferior to the High Court and Supreme Court, while awarding a sentence of life imprisonment under the Indian Penal Code to further provide for any specific term of incarceration, or till the end of a convict’s life, or to direct that there shall be no remission, as an alternate to the death penalty. That power is available only with the High Courts and the Supreme Court. Consequently, the trial Court, in the instant case, while awarding the Petitioner the sentence of rigorous imprisonment for life could not have added the riders that it should be for the rest of her natural life or that she would not be entitled to any remission.”

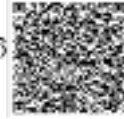
9. It was then concluded that in terms of the law explained by the



Constitution Bench of the Hon'ble Supreme Court in case of V. Sriharan @ Murugan and others (supra), the Trial Court, in its order dated 16.10.2018, awarding the sentence to the petitioner of rigorous imprisonment of life, was in error in adding the rider that it would be for the remainder of natural life and without any remission. The Court also set aside the order of the Divisional Commissioner, rejecting the petitioner's application for parole on the aforesaid ground. Not only this, in the concluding paragraph, direction was given to circulate copy of the judgment and also that of the case of V. Sriharan @ Murugan and others (supra), to all the Judicial Officers as well as Jail authorities in the States of Punjab, Haryana and Union Territory of Chandigarh. The concluding paragraph is as under :-

"The Court is informed that notwithstanding the clear legal position explained in V. Sriharan (supra), the trial Courts have been adding riders to orders on sentence passed by them similar to what the trial Court did in this case. Accordingly, the Court directs that a soft copy of this judgment together with the judgment of the Constitution Bench of the Supreme Court in V. Sriharan (supra) be circulated by the Chandigarh Judicial Academy through email to all the judicial officers as well as the Jail authorities in the States of Punjab and Haryana and the Union Territory of Chandigarh."

10. In view of the above said legal position enunciated by the Constitutional Bench of Hon'ble Supreme Court in V. Sriharan @ Murugan and others (supra), and further by Division Bench of this Court



in the case of Savitri (supra), there remains no doubt that order of the trial Court in sentencing the petitioner to undergo imprisonment for life, with a rider to extend to full life, is clearly in violation of the decision of Hon'ble Supreme Court in the case of V. Sriharan @ Murugan and others (supra). Such a sentence can be passed either by this Court or by Hon'ble Supreme Court only.

11. In view of the aforesaid legal position, it is also held that the State authorities are not debarred from considering the case of the petitioner for premature release in the light of its policy dated 08.08.2011. Consequent to the entire discussion of the factual matrix and legal position as above and taking into account the fact that petitioner has already undergone more than the actual sentence as required under the policy dated 08.08.2011, the present petition is hereby allowed.

12. Accordingly, the respondent-authorities are hereby directed to consider the premature release case of the petitioner in light of its policy dated 08.08.2011 and the observations made in this order. It is further directed that till the decision is taken by the competent authority regarding premature release of the petitioner as per this order, he be released on interim bail on furnishing requisite bonds to the satisfaction of the learned Chief Judicial Magistrate concerned.

13. It is further clarified that this order is subject to the final outcome of the appeal preferred by the petitioner, which is still stated to be pending adjudication before this Court. In case, on disposal of the appeal, it would be held that petitioner would be required to undergo imprisonment for life till

his natural life, then the petitioner would have to surrender before the concerned authorities or as may be directed by this Court at the time of disposal of appeal.

14. Disposed of in the above terms.
15. Pending applications, if any, shall stand disposed of along with this judgment.

November 12, 2024

monika

(GURBIR SINGH)

JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>