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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

272-2

CRWP-12104-2023 (O&M)
Date of decision : 10.09.2024

Som Nath**...Petitioner**

Versus

State of Haryana and others**...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Rahul Deswal, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India making prayer for setting aside the order dated 29.11.2023 (*Annexure P-4*), passed by the respondent No. 1, whereby, the case of the petitioner for premature release, as per the policy dated 12.04.2022 (*Annexure P-3*) as issued by the Govt. of Haryana, had been deferred for one year with a direction that his case will be re-considered after one year.

2. As submitted in the petition, the petitioner had been held guilty and convicted for commission of offence punishable under Section 302 read with Section 34 of IPC, vide judgment of conviction dated 01.09.2007 and order on quantum of sentence dated 04.09.2007, passed in case arising out of FIR No. 46 dated 08.04.2006, registered under Section 302 read with Section

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34 of IPC at Police Station Barara, District Ambala and had been sentenced to undergo rigorous imprisonment for life. Admittedly, he had filed an appeal against his conviction, which had been dismissed by a Division Bench of this Court, vide judgment dated 12.09.2012 passed in ***CRA-D-844-DB-2007***.

3. Learned counsel for the petitioner has vehemently argued that the petitioner had undergone the actual sentence of more than 14 years and 08 months and 18 days. His case was fully covered under the policy issued by the Govt. of Haryana on 12.04.2022 (Annexure P-3). His case was forwarded by the respondent No. 3-Superintendent, Central Jail, Ambala for premature release in the light of the aforesaid policy, however, instead of releasing the petitioner on premature release, respondent No. 1 had deferred his case for a period of one year by passing the impugned order dated 29.11.2023 (*Annexure P-4*). It is further submitted that vide orders dated 25.07.2018, convicts Hukmi Devi and Chandi Devi, who were also convicted for life imprisonment in the aforesaid case, had been granted benefit of premature release by respondent No. 1. It is further argued that while passing the impugned order, although respondent No. 1 had observed that the petitioner was entitled for the benefit of premature release in view of policy dated 12.04.2022, however, only on the ground that State Level Committee has observed that the petitioner along with co-accused had committed crime in a cruel, ghastly and barbaric manner, he had deferred the case of the petitioner, while ignoring the fact that aforesaid two convicts, who were convicted in the same case and were awarded the same sentence, had already been granted the said benefit. While submitting that respondent No. 1 had passed the impugned

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order in an arbitrary manner, it is urged that the petition deserves to be allowed and the impugned order is liable to be set aside.

4. *Per contra*, learned State counsel has argued that there is no infirmity in the impugned order passed by respondent No. 1 as the same was based on the recommendation of the State Level Committee, which had considered the parole case of the petitioner under para 2(a)(viii) of the Premature Release Policy dated 12.04.2023 in its meeting held on 25.10.2023 and it was only after due deliberations and keeping in view the manner in which the crime had been committed by the petitioner that his case for premature release was deferred for one year. Therefore, he has urged for dismissal of the present petition.

5. I have heard learned counsel for both the sides and have also gone through the material placed on record carefully.

6. At the outset, it may be mentioned that as per aforesaid policy dated 12.04.2023, a convict can be released prematurely on fulfilling certain conditions and on recommendation of the competent authority. As per the policy, the Superintendent of Jail concerned shall submit the premature release cases of life convicts two months in advance to the Director General of Police, Haryana with his comments. Then such cases will be put up by the Director General of Police, Haryana before the State Level Committee comprising Minister for Jails, being Chairman, Financial Commissioner and Principal Secretary of Govt. of Haryana, Jails Department, Legal Remembrancer, Haryana, being members and the Director General of Police, Haryana, being Member Secretary. The decision so taken by the said

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Committee shall be forwarded to the State Government for taking further action.

7. In the case in hand, the petitioner has been undergoing life imprisonment and had already undergone actual sentence of more than 14 years, 08 months and 18 days and including remissions, he had undergone a period of 20 years, 04 months and 03 days, as reflected from the impugned order itself. A perusal of the aforesaid policy reveals that the case of the petitioner falls under Clause 2(a)(viii), as per which, a convict can be considered for premature release on completion of 14 years of actual sentence including undertrial period, provided that such sentence including remissions should not be less than 20 years. Hence, the case of the petitioner is squarely covered under the aforesaid clause for his premature release. Now, this Court has to assess as to whether the grounds taken by the respondent-authority to pass the impugned order are sustainable in the eyes of law or not?

8. It is well settled that 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 own 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 proposition 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 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

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being applied unevenly to similarly circumstanced persons. Reliance in this regard can be placed upon the observations made by Hon'ble Supreme Court in ***Rajkumar vs. The State of Uttar Pradesh : AIR 2023 SC 265***. Once a policy is formulated by the State defining the terms for premature release, then due consideration in terms of the policy must be given to all eligible convicts as the Constitution guarantees against the arbitrary treatment and the right to secure life and personal liberty must not be foreclosed by an unfair process of considering the applications for premature release in terms of policy. Reliance can also be placed upon ***Rashidul Jafar @ Chota vs. State of Uttar Pradesh : 2022 (4) RCR (Criminal) 702***, wherein similar observations were made by the Apex Court and it was also held that implementation of the policy for premature release has to be carried out in an objective and transparent manner as otherwise it would impinge on the constitutional guarantees under Articles 14 and 21 of the Constitution. Undisputedly, no convict has fundamental right of seeking remission or shortening of sentence as a matter of right and it is always the discretion of the Government to grant remission by considering the peculiar facts of each case but it is equally well settled that the discretion so vested is to be exercised in an unbiased and fair manner and once a convict has been placed under a particular category, he cannot be discriminated against the others.

9. The case of the petitioner for his premature release has been deferred by respondent No. 1 by passing the impugned order while observing that the State Level Committee had observed that the petitioner along with co-accused had committed crime in a most cruel, ghastly and barbaric manner. It was not the case that the petitioner was not entitled to the relief sought by him.

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Rather, it is admitted in the impugned order that the policy dated 12.04.2023 was applicable to the case of the petitioner for premature release.

10. In *Gurbax Singh vs. State of Haryana : 1994 (3) RCR (Criminal) 342*, this Court has observed that it can hardly be doubted that in every murder, there is an element of brutality and murder in itself is a heinous crime but if the State Government itself has chosen to classify murder in different ways for the purpose of premature release, it is bound by its instructions and they must be followed. A perusal of the aforesaid policy reveals that there was no such provision to defer the case of a convict for premature release on the said ground, when otherwise he was eligible for the same having undergone the requisite period of custody. The petitioner has brought into notice of this Court that two convicts, namely Hukumi Devi and Chandi Devi, who were also convicted for life imprisonment along with the petitioner, have been extended benefit of premature release, vide orders dated 25.07.2018. The action of the respondent-authorities is certainly arbitrary in deferring the premature release case of the petitioner for one year. In the absence of any specific provision in the aforesaid policy at the time of conviction, the competent authority cannot act arbitrarily and defer the case of the petitioner for premature release. Reliance in this regard can be placed upon the judgment rendered by this Court in *Pohlu @ Polu Ram vs. State of Haryana and others*, CRWP-8232-2022, decided on 05.02.2024.

11. In view of the ratio of law as discussed above, it is clear that the impugned order cannot be stated to be sustainable in the eyes of law. Hence, the same is set aside. The respondent-authorities are directed to consider the

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case of the petitioner afresh for his premature release in the light of this order, within a period of two months from the date of receipt of this order.

12. It is made clear that during interregnum, the petitioner shall continue to be on special parole.

10.09.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes