

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRWP-12286-2023 (O&M)

Balbir Singh

.....Petitioner

Vs.

State of Haryana and Others

.....Respondents

Reserved On.: 19.04.2024
Pronounced On: 24.04.2024

CORAM: - HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By: Ms. Kanish Ganeriwala, Advocate for
Mr. D.N. Ganeriwala, Advocate
for the petitioner.

Mr. Sumit Jain, Addl. AG, Haryana.

DEEPAK GUPTA, J.

By way of this criminal writ petition filed under Articles 226/227 of the Constitution of India to be read with Section 482 Cr.P.C., petitioner prays for issuance of writ of certiorari for quashing the order dated 30.11.2023 (*Annexure P-4*) passed by the Respondent - Additional Chief Secretary, Government of Haryana, Jails Department, Chandigarh, whereby case of the petitioner for pre-mature release has been deferred for a period of 02 years.

2. Petitioner was convicted under Sections 302 IPC and Section 27 of the Arms Act, 1959 for committing double murders of Jagir Singh and Sukhdev Singh by firing shots with his .12 bore licensed gun on 16.12.1999, in FIR No.796 dated 16.12.1999 registered at Police Station City Sirsa. He was sentenced to undergo life imprisonment under Section 302 IPC by the learned Sessions Judge, Sirsa on 03.09.2002. The appeal filed by him has already been

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dismissed by this Court.

3. Ld. Counsel for the petitioner contends that petitioner had earlier filed CRWP-1340-2019 seeking pre-mature release, wherein vide order dated 05.05.2023 (*Annexure P-2*), this court directed the respondents to re-consider the case of petitioner for his pre-mature release after taking into account the policy dated 12.04.2002. It was observed that in view of the stand taken by the respondent- State, the petitioner with the passage of time had brought himself within the ambit and scope of para 2(a)(xii) of the pre-mature release policy instructions by completing 14 years actual imprisonment and 20 years imprisonment by including the remission period. Petitioner was granted interim bail by this Court vide order dated 18.05.2023 passed in CRM-W-688-2023 till the time the decision was taken by the respondents in compliance of the order dated 05.05.2023 (*Annexure P-2*). However, the respondents on re-consideration of the matter and despite acknowledging the fact that he had completed requisite and prescribed sentence of 14 years of actual custody and more than 20 years with remission, deferred the case for pre-mature release case of the petitioner for 02 years by way of impugned order dated 30.11.2023.

4. Learned counsel contends that the impugned order has been passed arbitrarily in willful disobedience of the direction of this Court as contained in the order dated 5.5.2023 (*Annexure P2*). Petitioner has given details of the cases pending against him, which have been referred by the respondents in their impugned order, so as to contend that all those cases are triable by Magistrate and are trivial in nature, as they have stemmed from the civil disputes and most of them relate to liability of the company namely Servehit Housing and Infrastructure India Limited, in which petitioner was one

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of the Director. The company had passed a Resolution dated 16.08.2011 for removal of the petitioner as its Director, as petitioner was confined in jail but no steps were taken by the company for removal of the petitioner as a Director in the records of the RoC, as a result of which petitioner continued to be accountable for the defaults of the said company. Learned counsel contends that petitioner has already undergone sentence more than the requisite period as per the policy instructions and so, impugned order be set aside.

5. In the reply filed by way of an affidavit of Shri Jagjit Singh, Inspector General of Prisons, O/o the Director General of Prisons, Haryana, it is contended that having regard to the conduct of the petitioner during the last five years of imprisonment, the Government rightly deferred his case for pre-mature release for a period of 02 years by way of the impugned order.

6. I have considered submissions of both the sides and have perused the record.

7. In the order dated 05.05.2023 (Annexure P-2) passed in CRWP-1340-2019, it was observed by this Court as under:

“7. As per the Policy regarding pre-mature release of life convicts issued by the State of Haryana vide memo No.36/135/91 1JJ(II) dated 12.04.2002 of the Financial Commissioner and Principal Secretary to Government, Haryana Jails Department (Annexure R-1), various convicts have been divided in different categories, whose cases are to be decided by the Government regarding pre-mature release, depending upon the sentence already undergone by them. The cases for pre-mature release are reviewed by the State level Committee.

8. Petitioner claims to be falling in the category 2(b), which reads as under:

2(b)	Adult life convicts who have been imprisoned for life but whose cases are not covered under (aa) & (a) above and who have committed crime	Their case may be considered after completion 10 years actual sentence including undertrial period provided that the total period of such sentence
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	which are not considered heinous as mentioned in clause(aa) & (a) above.	including remission is not less than 14 years.
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9. On the other hand, as per respondents, the case of the petitioner falls under category 2(a)(xii), which is as under: -

2(a)(xii)	Convicts who cannot for some definite reasons be prematurely released without danger to public safety.	Their cases may be considered after completion of 14 years actual sentence including undertrial period provided of such sentence including remission is not less than 20 years.
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10. In the present case, the impugned order dated 17.08.2017 (Annexure P-3) reveals that State level Committee took into consideration the fact that when the petitioner returned from furlough on 18.07.2012, 85 grams of opium was recovered from him and case FIR No.524 dated 18.07.2012 under Sections 17/18 and 42 of Prisons Act was registered against him, in which he has been convicted and sentenced to undergo rigorous imprisonment for a period of 1 year and 6 months. Considering the fact that said offence was committed by the petitioner during his conviction period and when he returned from furlough, the respondents cannot be stated to be at fault in considering him to be danger to the public safety and as such, petitioner cannot claim to be falling in category 2 (b) of the Policy.

11. However, with the passage of time, the case of the petitioner can be now considered even in category 2(a)(xii) of the Policy. In this regard, learned counsel for the petitioner has rightly urged that in the custody certificate dated 01.05.2023, actual custody period after conviction has been wrongly calculated to be 11 years, 05 months and 26 days by not including the parole period and that after including the parole period, the actual custody period after conviction works out to be 15 years, 02 months and 08 days. Learned counsel has referred to the judgment of “Faqir Singh v. State of Punjab and Ors.” MANU/PH/0207/1987, wherein it was held by this Court that the time spent on parole by a prisoner could legitimately be included in the period of imprisonment undergone by him and as such it has to be so considered while deciding the pre-mature release case, although in view of Section 3(3) of the Punjab Good Conduct Prisoners (Temporary Release) Act, the period spent by the petitioner on parole cannot be counted towards the total period of sentence of imprisonment. The view taken by this High Court in Faqir Singh’s case (supra) is also mentioned in the Policy dated 12.04.2002 (Annexure P-2)

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clearly stating therein that the period spent on parole will be counted towards the period of actual sentence, though it has to be excluded from the total period of sentence.

12. Once it is so and the period of parole availed by the petitioner is taken into consideration in this case, his actual custody period after conviction works out to be 15 years, 02 months and 08 days, i.e., more than 14 years.

13. In view of above, this petition is hereby disposed of with direction to the respondents to re-consider the case of the petitioner for his pre-mature release by taking into account the Policy dated 12.04.2002 (Annexure P-2) and by taking into consideration the sentence, which has now been undergone by the petitioners, keeping in view the observations made in this order.”

8. The impugned order dated 30.11.2023 (Annexure P-4) would reveal that it was found by the respondents that pre-mature release case of the petitioner was covered under para 2(a)(xii) of the pre-mature policy dated 12.04.2002. After considering the fact that petitioner had committed double murder and had remained involved in various other cases, it was held that he did not deserve any concession and so, the case for pre-mature release was deferred. The impugned order notices the fact that actual sentence of the petitioner had already crossed 14 years and the total sentence, by including the remission period, as more than 20 years.

9. In *Rashidul Jafar @ Chota Vs. State of Uttar Pradesh and another [Writ Petition (Criminal) No.336 of 2019]* decided on 06.09.2022, it has been held by Hon’ble Supreme Court as under: -

“The 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. Many of these life convicts who have suffered long years of incarceration have few or no resources. Lack of literacy, education and social support structures impede their right to access legal remedies. Once the state has formulated its policy defining the terms for premature release, due consideration in terms of the policy must be given to

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all eligible convicts. The constitutional guarantees against arbitrary treatment and of the right to secure life and personal liberty must not be foreclosed by an unfair process of considering applications for premature release in terms of the policy.”

10. In another case titled *Rajkumar Vs. The State of Uttar Pradesh* [Writ Petition (Criminal) No.36 of 2022], decided on 06.02.2023, it has been observed by Hon’ble Supreme Court 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 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.”

11. In present case, in view of the legal and factual position regarding the period of sentence undergone by the petitioner, he had clearly become entitled to be released pre-maturely as per Clause 2(a)(xii) of the pre-mature release policy dated 12.04.2002.

12. The question as to whether respondents can defer the case for pre-mature release for any period whatsoever, was considered by a co-ordinate Bench of this Court in *CRWP-8232-2022 titled as “Pohlu @ Polu Ram v. State of Haryana”* along with various other similar petitions, decided vide

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common order dated 05.02.2024, in which it was observed as under:-

“In the absence of any specific provision in the applicable policy at the time of conviction of convict, the competent authority cannot act arbitrarily and defer the cases of prisoners for pre-mature release especially by applying the rigours of change of policy, in view of the law laid down in **Rajkumar’s case** (supra)”

13. In this case also, the pre-mature policy dated 12.04.2002 does not contain any specific provision empowering the competent authority to defer the case of a prisoner for pre-mature release. As such, the impugned order dated 30.11.2023 (Annexure P-4) as passed by the respondents cannot be sustained in the eyes of law.

14. The reply of the respondents would also reveal that petitioner, as on 05.01.2024, had already undergone actual sentence of 14 years 07 months and 17 days and total sentence, by including the remission period, as 20 years 11 months and 20 days. As a period of more than 03 months has since elapsed, so now, actual sentence of the petitioner is more than 14 years and 10 months and total sentence by including remission period is more than 21 years.

15. Having regard to all the entire discussion as above, the impugned order dated 30.11.2023 Annexure P4 passed by the respondents is set aside. Petitioner is directed to be released pre-maturely immediately.

Petition is allowed accordingly.

(DEEPAK GUPTA)
JUDGE

April 24, 2024

Neetika Tuteja

Whether Speaking/reasoned Yes
Whether Reportable Yes