

2025:PHHC:103229



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

333

**CRWP-8795-2024 (O&M)**  
**Date of decision : 11.08.2025**

**Gurdial Singh****...Petitioner****Versus****State of Punjab and others****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Suram Singh Rana, Advocate

Mr. Roshandeep Singh, AAG, Punjab.

**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 24.04.2023 (Annexure P-3), passed by the respondent No. 1, whereby, the case of the petitioner for premature release, as per the policy dated 08.07.1991 (Annexure P-2), had been declined. He has also made prayer for issuance of a writ in the nature of mandamus by directing the respondents to release him on the ground that as per conditions of the aforementioned policy, he has already undergone his sentence.

2. As submitted in the petition, the petitioner had been held guilty and convicted for commission of offence punishable under Section 302 of Indian Penal Code (*for short 'IPC'*), vide judgment of conviction and order on quantum of sentence dated 24.05.2008, passed in case arising out of FIR No. 147 dated 19.07.2006, registered under Sections 302, 148 and 149 of IPC at Police Station Phillaur, Jalandhar and had been sentenced to undergo rigorous imprisonment for life. The petitioner had filed an appeal before this

2025:PHHC:103229



Court against his conviction, which had been dismissed, vide judgment dated 23.01.2013 passed in ***CRA-D-504-DB-2008***.

3. Learned counsel for the petitioner has vehemently argued that as per custody certificate dated 25.07.2025, the petitioner had undergone the actual sentence of 17 years, 08 months and 12 days and after including the remission, he had undergone sentence of 25 years, 08 month and 12 days. The petitioner had applied for grant of benefit of pre-mature release in view of policy dated 08.07.1991. However, his prayer has been declined on the basis of the report of the Additional Sessions Judge, Jalandhar, which alone could not be a ground for rejecting the prayer as made by the petitioner. It is further argued that while passing the impugned order, respondent No. 1 was swayed by the report given by the learned Additional Sessions Judge, Jalandhar and did not consider the requirements necessary for arriving at this conclusion.

4. It is further argued by learned counsel for the petitioner that even the Presiding Judge/Additional Sessions Judge, Jalandhar, while giving his report, did not take into account the principles laid down by Hon'ble Supreme Court in ***Laxman Naskar vs. Union of India : (2000) 2 SCC 595***. The further argument as raised by him is that the reason for rejection of the prayer of the petitioner on the basis of report submitted by the Presiding Judge was perfunctorily relied upon, though the same demonstrated a casual opinion. It is also submitted that over emphasis was given to the opinion of the Presiding Judge, thereby making the impugned order unsustainable in the eyes of law. It is also argued that the petitioner is aged about 62 years and is suffering from age related health problems. Therefore, it is urged that the present petition deserves to be allowed. To fortify his arguments, learned counsel for the

2025:PHHC:103229



petitioner has relied upon the latest judgments of Hon'ble Supreme Court cited as ***Rajo alias Rajwa alias Rajendra Mandal vs. State of Bihar and others : 2023 SCC Online 1068, Satish @ Sabbe vs. the State of Uttar Pradesh : 2023 SCC (Criminal) 626, Rashidul Jafar @ Chota vs. State of Uttar Pradesh and another : 2022 (4) RCR (Criminal) 702.***

5. Reply along with custody certificate has been filed by the respondent-State. It is argued by learned State counsel that the petitioner had been convicted for commission of a heinous crime, hence, his application for premature release had rightly been dismissed. Therefore, he has urged for dismissal of the present petition.

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

7. At the outset, it may be mentioned that Section 432(2) of the Code of Criminal Procedure (*for short 'the Code'*) empowers the appropriate government to seek opinion of the Presiding Judge of the Court before or by which the applicant had been convicted on whether the application should be allowed or rejected. In ***Rajo's*** case (*supra*), Hon'ble Supreme Court observed that sentencing was a judicial exercise of power. The act thereafter of executing the sentence awarded, however, was a purely executive function - which included the grant of remission, commutation, pardon, reprieves, or suspension of sentence. This executive power, which is inherently discretionary in nature, has to be exercised fairly, reasonably, and not arbitrarily. It was also observed that absence to do so, when compelled the Court to exercise its judicial review and in appropriate cases, remit the matter for reconsideration. Hon'ble Supreme Court had also made reference to the

2025:PHHC:103229



judgment cited as *State of Haryana vs. Jagdish : (2010) 4 SCC 216*, wherein the framework of the executive power in this regard and how the same was to be exercised lucidly, was explained. The relevant paragraph of the judgment in *Jagdish*'s case (supra) may be reproduced as under :

“27. Nevertheless we may point out that the power of the sovereign to grant remission is within its exclusive domain and it is for this reason that our Constitution makers went on to incorporate the provisions of Article 72 and Article 161 of the Constitution of India. This responsibility was cast upon the executive through a constitutional mandate to ensure that some public purpose may require fulfillment by grant of remission in appropriate cases. This power was never intended to be used or utilized by the executive as an unbridled power of reprieve. Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way, wipe out the conviction. It is a power which the sovereign exercises against its own judicial mandate. The act of remission of the State does not undo what has been done judicially. The punishment awarded through a judgment is not overruled but the convict gets benefit of a liberalized policy of State pardon. However, the exercise of such power under Article 161 of the Constitution or under Section 433-A CrPC may have a different flavour in the statutory provisions, as short-sentencing policy brings about a mere reduction in the period of imprisonment whereas an act of clemency under Article 161 of the Constitution commutes the sentence itself.”

8. In *Rajo*'s case (supra), Hon'ble Supreme Court had also discussed the outlined parameters to be considered when considering the grant

2025:PHHC:103229



of remission by referring to **Jagdish**'s case (supra), whereby in paragraph No. 38, it was observed as under:

“38. At the time of considering the case of premature release of a life convict, the authorities may require to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict any more; the socio-economic condition of the convict's family and other similar circumstances.”

9. Reference had also been made by Hon'ble Supreme Court in **Rajo**'s case (supra) to **Laxman Naskar**'s case (supra) indicating the following factors to be taken into account by the Presiding Judge:

- (i) whether the offence affects the society at large;
- (ii) the probability of the crime being repeated;
- (iii) the potential of the convict to commit crimes in future;
- (iv) if any fruitful purpose is being served by keeping the convict in prison; and
- (v) the socio-economic condition of the convict's family.

10. Now it may be mentioned that the Govt. of Punjab, Department of Home Affairs and Justice has framed policy on 08.07.1991 granting remissions of sentences of life imprisonment keeping in view the provisions of Sections 432, 433 and 433(A) of the Code as well as Article 161 of Constitution of India. It is important to mention here that in this policy dated

2025:PHHC:103229



08.07.1991, the details of offences which fall into the category of heinous crime have also been given and as per the same, the case of the petitioner does not fall within the definition of heinous crime. His case admittedly stands covered under Clause C of the policy dated 08.07.1991, as per which, the case of a convict for premature release is to be considered after 10 years of actual imprisonment and 14 years of imprisonment with remissions. Since as per the custody certificate dated 25.07.2025, the petitioner has already undergone actual sentence of 17 years, 08 months and 12 days and after including the remission, he has undergone sentence of 25 years, 08 months and 12 days, therefore, as per Clause C of the policy, he has completed the requisite period, required for considering the case of a convict for premature release.

11. On a glance of the impugned order, it is revealed that while passing the same, respondent No. 1 took into consideration the opinion given by the Presiding Judge/Additional Sessions Judge, Jalandhar to the effect that the case of the petitioner was not fit for grant of premature release. In **Rajo's** case (supra), Hon'ble Supreme Court, while dealing with a case of similar nature, had observed that the report of the Presiding Judge cannot be relied on as carrying predominance, if it focuses on the crime, with little or no attention to the criminal. The appropriate government, should take a holistic view of all the opinions received (in terms of the relevant rules), including the judicial view of the presiding judge of the concerned court, keeping in mind the purpose and objective, of remission but over emphasis on the Presiding Judge's opinion and complete disregard of comments of other authorities, while arriving at its conclusion, would render the appropriate government's decision on a remission application, unsustainable.

2025:PHHC:103229



12. In *Rajo*'s case (supra), it was further observed that the views of the Presiding Judge were based on the record, which existed, containing the facts resulting in conviction, including the nature of the crime, its seriousness, the role of the accused and the material available at that stage regarding their antecedents. However, post-conviction conduct, particularly, resulting in the prisoner's earned remissions, their age and health, work done, length of actual incarceration, etc., rarely fall within the domain of such Presiding Judge. Hon'ble Supreme Court also observed that another factor to bear in mind was that the Presiding Judge would not be the same Presiding Judge, who had the occasion to observe the convict and then form opinion and such Presiding Judge will only look into the record leading to conviction. By further observing that the judicial involvement in executive decision making is limited to the input it provides regarding the nature of the crime, its seriousness etc.; that the aim and ultimate goal of imprisonment, even in the most serious crime, is reformatory, after the offender undergoes a long spell of punishment through imprisonment and that the State authority was under an obligation to exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. While relying upon *Jagdish*'s case (supra), it was further observed that the State has to exercise its power of remission keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case. In case, a liberal policy prevails on the date of consideration of the case of the convict for premature release, he should be given benefit thereof. In *Rajo*'s case (supra),

2025:PHHC:103229



Hon'ble Supreme Court, in view of the above discussion, directed the Remission Board to reconsider the application of the petitioner afresh considering the report of the police and other authorities, the post-prison record of the petitioner, the remissions earned for his good conduct, his age, health condition, family circumstances, and his potential for social engagement, in a positive manner.

13. On applying the ratio of law as laid down by Hon'ble Supreme Court in above cited judgments to the peculiar facts and circumstances of the present case, it is observed that while passing the impugned order, respondent No. 1 had mainly taken into consideration the report of the Presiding Judge declining clemency to the petitioner. The Presiding Judge is also not shown to have taken all the factors which were required to be taken into consideration as per instructions issued to the Presiding Judges/Sessions Judges, vide letter dated 21.03.2023 bearing No. 622/Spl.Gaz.II.17. The said factors are reproduced as under:

- (i) The conduct of the convict in prison.
- (ii) Whether the offence is an individual act of crime without affecting society at large.
- (iii) The gravity of the offence, the cruelty displayed by the accused while perpetrating crime and the circumstances in which he committed the offence resulting into his conviction.
- (iv) The genuineness of the reason(s) given by the convict to have temporary suspension/remission of sentence.
- (v) Whether there is any chance of future recurrence of commission of crime by the convict.

2025:PHHC:103229



- (vi) Whether the convict has lost his potentiality in committing crime.
- (vii) Whether there is any fruitful purpose of confining the convict anymore.
- (viii) Socio-economic condition of the convict's family.
- (ix) The injury that could be caused to the convict in the event of denial of suspension/remission of sentence.
- (x) Any danger to the life of convict himself in the event of denial of suspension/remission of sentence.
- (xi) Whether the convict poses a threat to the victim, victim's family or any other person related to the victim.
- (xii) The pendency of an appeal, if any, against such conviction.
- (xiii) Other aspects which in the opinion of the Presiding Officer are relevant.

14. As such, in view of the discussion as made above and while taking into consideration the fact that the petitioner has undergone the period of more than actual sentence as well as total sentence including remission period as minimum required under the policy dated 08.07.1991, the impugned order dated 24.04.2023 does not sustain and accordingly, the same is set aside. The respondents-authorities are directed to set the petitioner at liberty forthwith by granting him benefit of premature release on usual terms and conditions as per Govt. instructions dated 08.07.1991.

15. The petition stands allowed accordingly.

11.08.2025

*Waseem Ansari*

(MANISHA BATRA)  
JUDGE

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|----------------------------------|------------|
| <i>Whether speaking/reasoned</i> | <i>Yes</i> |
| <i>Whether reportable</i>        | <i>Yes</i> |