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278 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRWP-9603-2024

Date of Decision: 30.04.2025

Subhash @ Bhasha

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mrs. Manju Goyal, Advocate for the petitioner.

Mr. Harkesh Kumar, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present criminal writ petition has been filed under Article 226 of Constitution of India for issuance of writ in the nature of Certiorari for quashing the impugned order dated 06.08.2024 (Annexure P-1) passed by respondent No.1, whereby the application filed by the petitioner for premature release has been declined, in contravention of the policy dated 13.08.2008 (Annexure P-2).

2. Learned counsel for the petitioner *inter alia* submits that the petitioner has undergone 15 years 03 Months 18 days of actual custody and a custody of 20 years 00 months 13 days including remission. According to the applicable policy i.e. policy dated 13.08.2008, the petitioner falls into Category 'B' and requires 14 years of actual custody and 20 years of total custody to be eligible for premature release. The State Level Committee was required to consider the case of the petitioner, in terms of the policy applicable at the time of his conviction, which would be the policy dated 13.08.2008, according to which the petitioner is eligible for premature release. However, the case of



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petitioner was rejected on the ground of involvement in other criminal offences and in view of that the same has been deferred by one year. Denying the concession of premature release to a convict citing nature of the offence committed by him would defeat the purpose of the policy. Reliance in this regard has been placed upon the judgments rendered by the Hon'ble Supreme Court in *State of Haryana and others Vs. Jagdish, AIR 2010 SC 1690*. Further, a co-ordinate bench of this Hon'ble court in *Subash vs. Haryana 1994(3) R.C.R. (Criminal) 489*; and *Lila Singh vs. State of Punjab 1988(1) R.C.R. (Criminal) 28* has held that involvement in other offences would not be a ground to deny the concession of premature release.

3. *Per contra*, learned State counsel could not controvert the fact that the case of the petitioner was required to be considered under the policy which was applicable at the time of his conviction i.e. policy dated 13.08.2008 or that his case was rejected on the above mentioned grounds and deferred by one year vide impugned order dated 06.08.2024 (Annexure P-1).

4. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the petitioner was convicted by the learned Additional Sessions Judge, Hisar vide judgment of conviction and order of sentence dated 25.09.2010 in the case stemming from FIR No.287 dated 22.07.2008 registered under Sections 302, 34 of the Indian Penal Code, 1860 and Section 27 of Arms Act at Police Station City Hansi, District Hisar. The State level committee declined the premature release case of petitioner vide order dated 06.08.2024 by stating that the petitioner is involved in 9 other criminal offences, and being convicted and sentenced to life imprisonment his conduct is required to be further evaluate. In this regard,



Co-ordinate bench of this Court in **Subhash v. State of Haryana 1994(3) R.C.R.(Criminal) 489** has held that involvement in other offences would not be a ground to deny the concession of premature release. Speaking through Justice V.K. Jhanji, the following was observed:

“4. It has been held in Lila Singh v. State of Punjab, 1988(1) RCR 28 that reasoning given in the order declining premature release to the petitioner-convict that he had committed jail offences and his release will prove hazardous to peace and tranquillity in the locality are no legal reasons to decline premature release. The reasoning was on the basis that the convict has already undergone imprisonment for committing jail offences and there is no material to hold that his release is likely to prove hazardous to peace and tranquillity in the locality. Thus, it was held that the jail offences committed by the convict for which he has already been punished, cannot be taken into consideration while deciding the case of the petitioner for his premature release.”

Reliance in this regard can also be placed on **Kamal Kant Tiwari v. State of Punjab and others 2014(2) R.C.R.(Criminal) 940** and **Lila Singh v. State of Punjab 1988(1)R.C.R(Criminal) 28**. A perusal of the policy dated 13.08.2008 indicates that involvement in other criminal cases does not make an applicant ineligible for grant of premature release.

5. A two Judge bench of the Hon’ble Supreme Court in **State of Haryana Vs. Jagdish AIR 2010 SC 1690**, speaking through Justice Dr. B.S. Chauhan laid down the parameters to consider while deciding upon the question of premature release:

“38. At the time of considering the case of pre-mature release of a life convict, the authorities may require to consider his case mainly taking into consideration
1. whether the offence was an individual act of crime without affecting the society at large;
2. whether there was any chance of future recurrence



of committing a crime;
 3. *whether the convict had lost his potentiality in committing the crime;*
 4. *whether there was any fruitful purpose of confining the convict any more;*
 5. *the socio-economic condition of the convict's family and other similar circumstances.”*
(enumeration added)

6. This Court in ***Pohlu @ Polu Ram Vs. State of Haryana and others 2025(1) RCR(Criminal) 297*** has strongly discouraged the practice of indiscriminately deferring cases pertaining to premature release or dismissing them on the grounds of the applicant being a threat to the society, involved in other cases or in view of the opinion rendered by the Presiding Officer and the following conclusions were drawn:

“11. The entire edifice of exercise of judicial or quasi-judicial power rests on the foundation of giving reasoned and detailed orders. It is a fundamental principle of natural justice and ensures that there is proper and due application of mind while exercising said power. Therefore, the practice of arbitrarily categorising convicts as threats to society or indiscriminately deferring their cases for premature release needs to be strongly discouraged. It is expedient that the competent authority does not act in a ritualistic fashion and application of mind is discernable.

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17. Having heard learned counsel for the parties and after perusing the record with their able assistance, grounds on which the cases of the petitioner(s) were rejected, are categorized as under:-

(i) Involvement in other cases or jail offences.

In view of the law laid down by the Hon'ble Supreme Court of India in Lila Singh's case, Subhash's case and Kamal Kant Tiwari's case (supra), involvement of the convict in other cases or jail offences cannot be a ground to deny the concession of premature release.

(ii) Premature release of convicts would pose threat to security.



In case, the convict has been periodically released on furlough/parole and during his release, he did not indulge in any such activity which disturbed the public peace or posed a threat to the society, rejection of his application for premature release on the ground that same would pose to be a serious threat to the society, is not sustainable.

(iii) Deferred in the absence of any specific provision in the applicable policy or rejected/deferred on the ground of offences being grave and serious in nature.

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

(iv) Opinion of Presiding Officers.

The concession of premature release cannot be denied because the case was not recommended by the Presiding Officer as his opinion is not binding. The Presiding Officers are required to scrupulously follow the instructions issued by the Registrar vide letter bearing No.622/Spl/Gnz 11.17, with regard to rendering the opinion in terms of Section 432(2) of the Cr.P.C."

7. While the petitioner has committed grave and serious offenses, once a duly enacted policy is in existence, it must be honored and applied to each case in its letter and spirit. The theory of reformation and rehabilitation that emerged in the 18th century aims at separating the criminal from the crime and compels us to look beyond the one fateful act committed by him. In a civilized society like ours, it would be truly unfortunate, if an offender is not given the opportunity to realize and fully fathom his mistake and channel that awareness into making fruitful contributions in society. The peno-correctional institutes must not only be looked at as a place, where punishment is carried out, but also a place of rehabilitation. The criminal justice dispensation system must be



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guided by the idea of allowing the offender to rectify his wrong and reintegrate into the society as a law abiding member once the sentence is served.

8. A perusal of the policy dated 13.08.2008 does not indicate any provision allowing deferment of the case of an applicant. The competent authority is required to assess the case, strictly in terms of the applicable policy, and pass a reasoned order either accepting or rejecting the applicant's claim for premature release. This delay has caused the petitioner unnecessary detention that amounts to unjust curtailment of his liberty. This approach also falls foul of the directions issued by this Court in ***Pawan Kumar vs. D.K. Tiwari and another COCP No. 2020 of 2022.***

9. Therefore, in view of the ratio of law laid down in ***Jagdish (supra)***, ***Subash(supra)***, ***Lila Singh(supra)*** and ***Pohlu @ Polu Ram (supra)***, the present petition is disposed of and the impugned order dated 06.08.2024 (Annexure P-1) passed by respondent No.1 is set aside. Further, the official respondents are directed to consider the case of the petitioner afresh, strictly in accordance with the policy applicable at the time of his conviction, preferably within a period of 08 weeks from the receipt of the certified copy of this order, strictly in accordance with ***Pawan Kumar's case (supra)***. Further, the official respondents are also directed to decide the case of the petitioner for premature release expeditiously, strictly in accordance with the policy applicable at the time of his conviction.

10. It is made clear that any deviation from the policy or the guidelines/directions given by this Court would entitle the petitioner to file an appropriate petition under Article 215 of the Constitution of India, seeking initiation of Contempt of Court proceedings against the official concerned.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

30.04.2025

Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned :Yes/No

Whether reportable :Yes/No