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

CRWP-10406-2024

Date of Decision: 15.01.2025

Sunil @ Kalla

..... Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Varinder Singh Rana, Advocate for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

Rajesh Bhardwaj, J. (ORAL)

1. Present petition has been filed praying for setting aside the impugned order, dated 06.08.2024, Annexure P-2, passed by respondent No.1, rejecting the premature release case of the petitioner. It is further prayed to issue directions to the respondents to reconsider the case of the petitioner for his premature release as he has undergone more than the requisite sentence required for consideration of his premature release.

2. It has been contended by learned counsel for the petitioner that petitioner was prosecuted in case FIR No.291, dated 25.08.2009, under Sections 302, 380 IPC, registered at Police Station Sector-5, District Gurugram. After conclusion of the trial, he was convicted for the offence under Sections 302, 380 IPC and sentenced to undergo life imprisonment with fine of Rs.15,000/-, by learned Sessions Judge, Gurgaon, on 24.05.2010. The petitioner filed appeal bearing CRA-D-781-DB-2010 before this Court, which was dismissed on 21.11.2018. He has submitted that the petitioner had filed an application for grant of premature release as per instructions issued by the Haryana Government, dated 11.08.2008. He



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has submitted that as per instructions, case of the petitioner is covered by Clause (b) of the policy, according to which case of a life convict can be considered after completion of 14 years of actual sentence including under trial period provided that the total undergone period of such sentence including remission is not less than 20 years. He submits that as the petitioner was eligible for his premature release in view of the Policy, dated 11.08.2008, his case was recommended for consideration of his premature release by the State. However, on consideration of his case, the respondent/State had rejected his case of premature release vide impugned order, dated 06.08.2024 on the ground that petitioner committed crime in a most cruel, ghastly and barbaric manner and in addition, he committed two jail offences and his conduct was not satisfactory. He submits that the view taken by the respondent/State in rejecting his prayer for premature release is totally illegal, unreasonable and hence unsustainable in the eyes of law. He submits that as per the terms and conditions of the Policy, dated 11.08.2008, the petitioner has already undergone more than the period of sentence required for consideration of his premature release as per the Policy. He, thus, submits that the conclusion arrived at by the respondent/State in holding that the petitioner had committed a heinous offence is in violation of the Policy, dated 11.08.2008, thus, he submits that the impugned order being unsustainable in the eyes of law deserves to be set aside and respondent/State be directed to re-consider the case of the petitioner in accordance with law. He relies upon **Raju Alias Rajesh vs. State of Haryana and others**, in CRWP-2160-2024 decided on 11.03.2024, **Lallan @ Pankaj vs. State of Haryana and others**, in CRM-M-8450-2024



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decided on 02.09.2024 and **Braham Singh @ Neetu vs. State of Haryana and others**, passed in CRWP-7818-2024 decided on 13.08.2024.

3. Per contra, learned State counsel has opposed the submissions made by learned counsel for the petitioner. He has drawn attention of this Court to the reply, dated 18.11.2024, filed by way of affidavit of Lakhbir Singh, Chief Probation Officer O/o the Director General of Prisons, Haryana on behalf of respondents No.1 to 3. He has submitted that the petitioner committed murder of Vinita wife of Kamlesh by giving *lathi* blows and thereafter, he also committed theft of one mobile phone, two wrist watches and cash amount from her house and ultimately he was sentenced for life imprisonment in this case by learned trial Court. The appeal filed against the same was dismissed by this Court vide order dated 21.11.2018. It has been further mentioned therein that the petitioner was released on four weeks parole and while surrendering back after completion of parole period, he was found in possession of 180 gms. *Sulfa*. Besides this, a mobile phone was also recovered from the under trial prisoner while the petitioner was deputed on barrack nigran duty and thus, he committed two jail offences. It is mentioned in the status report that the petitioner cannot claim premature release as a matter of right and it is only a concession given by the State Government after considering the behaviour of the convict inside the jail. It is further mentioned that on completion of 14 years, 10 months, 03 days of actual sentence and 20 years and 02 days of total sentence, case of the petitioner was placed before the State Level Committee for premature release, who after considering whole material recommended for rejection of the claim of the petitioner for premature release and also directed that his case be put up



after two years. It is stated that the Government after considering the recommendation of State Level Committee, deferred the case of the petitioner for two years for reconsideration. He has submitted that State Government has to follow the direction issued by Hon'ble Supreme Court in **Life Convict Laxman Naskar vs. State of West Bengal and another,** decided on 01.09.2000, wherein certain guidelines were issued by Hon'ble Supreme Court for consideration at the time of deciding premature release case of a convict. In the light of the said guidelines, the case of the petitioner for premature release was rejected for two years on the ground of his committing heinous crime and also taking into account his previous conduct during the last five years. It is further submitted that only on the basis of the completion of term in jail while serving imprisonment and remissions earned under the relevant rules or law will not entitle the convict to automatic release but the appropriate Government must pass a separate order remitting the unexpired portion of the sentence. It is submitted that right to approve, reject or defer premature release is reserved with the Government and the petitioner cannot claim premature release as a matter of right and the case of the petitioner has been rejected for two years to evaluate his conduct as per the provisions of law. He submits that no illegality has been committed while passing the said order and thus, the petition being devoid of any merit deserves to be dismissed.

4. Heard. A perusal of the notification dated 11.08.2008 reveals that the case for premature release of the convict is to be prepared by the Jail Superintendent concerned alongwith his comments and record of remission keeping in view the following points:-



“(a) The Convict's conduct for the last five years from the date of his/her eligibility for consideration of premature release shall be specifically taken into consideration.

(b) His/her overall conduct may be categorized as 'Good if he/she has not been punished for any Jail offence during the last five years.

(c) The conduct may be categorized as 'Satisfactory' if he/she has been punished with only one minor jail punishment during the last five years for any Jail offence.

(d) The conduct of a life convict who has been punished with a major punishment or more than one minor punishments for jail offences during the last five years shall be categorized as 'not satisfactory'.”

5. There is no denial to the fact that the case of the petitioner was prepared by the Jail Superintendent concerned and was put up before the State Level Committee for passing appropriate orders. Once, the case of the petitioner is prepared by the Jail Superintendent, it means that the overall conduct of the petitioner was taken into consideration by the Jail Superintendent concerned before recommending the case for his premature release. The State Level Committee while considering the case of the petitioner for premature release made recommendations for rejection of his claim as stated above and learned Additional Chief Secretary to Government of Haryana rejected the same and directed to evaluate his conduct and for reconsideration of his case after two years. A perusal of the impugned order (Annexure P-2) shows that learned Additional Chief Secretary relied upon only the recommendations of the State Level Committee and has not referred to any other material for reaching to the said conclusion. Clause ‘b’ of the policy dated 11.08.2008 reads as under:-

(b) Convicts who have been imprisoned for life having committed any crime is defined in IPC and/or NDPS Act as punishable with death sentene.	Their cases for pre-mature release may be considered after completion of 14 years actual sentence including under trial period; provided that the total period of such sentence including remissions is not less than 20 years.
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6. Although the respondents have denied the fact that the petitioner is entitled to be released on premature release being covered under Clause ‘b’ of the policy, but there is no explanation furnished by the respondents to show as to how the case of the petitioner is not covered under said Clause. As per Clause ‘b’ of the policy, a convict is entitled to be released on premature release after completion of 14 years of actual sentence including under trial and a total period of 20 years of sentence including remissions. In the reply itself, the respondents have stated that the petitioner had completed 14 years 10 months, 3 days of actual sentence and 20 years 02 days total sentence including the period of remissions as on 30.06.2024. A perusal of the reply further shows that as on 07.11.2024, total period undergone by the petitioner is 15 years 06 months and 08 days and after including remissions he has undergone a period of 20 years 09 months and 20 days. The respondents have taken the assistance of factors like heinousness of crime and conduct of the petitioner during last five years while denying him the benefit of premature release. The petitioner was tried for the offence of murder and was ultimately convicted and sentenced to undergo life imprisonment. For the jail offence i.e. recovery of 180 grams of sulfa from the petitioner and a mobile phone from under trial prisoner at the time when the petitioner was deputed on barrack nigran duty, he was already punished and as such these cannot be considered against him for denying



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the relief to which he is entitled as per law. This is true that no convict has the fundamental right of remissions but once his case is covered under the notification issued by the State Government, then he cannot be denied the benefit of the same, to which he has legally entitled.

Involvement of the petitioner in the Jail offence cannot be considered a valid ground for rejection of his premature case

7. Hon'ble Supreme Court in Karamjit Singh vs. State (Delhi Admn.), AIR 2000 SC 3467 has held as under:-

"Punishment in criminal cases is both punitive and reformatory. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformatory aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the



facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law."

8. Thus, the Court finds that the impugned order, dated 06.08.2024, passed by the respondent/State is unsustainable in the eyes of law and the same is set aside. Present petition is disposed of with a direction to respondent/State to reconsider the case of the petitioner on the anvil of the law settled and pass a fresh speaking order, in accordance with law, within a period of three months from the date of receipt of a copy of this order.

15.01.2025

sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned :	Yes/No
Whether Reportable :	Yes/No