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

CRWP-834-2024
DECIDED ON: 01.07.2024

AFTAB @ SAKIL

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

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

Mr. Chetan Sharma, DAG, Haryana.

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SANDEEP MOUDGIL, J

1. The jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 has been invoked by the petitioner seeking quashing of the impugned order dated 11.12.2023 (Annexure P-8) passed by respondent No.1 vide which the prayer for grant of premature release has been rejected and passed an order that the petitioner shall remain in jail till his last breath.

2. Mr. Rahul Deswal, Advocate for the petitioner has *inter-alia* submits that the case of the petitioner is squarely covered under para 2 (aa) (iv) of the Premature Release Policy dated 12.04.2002 (Annexure P-3). According to the said provision, the petitioner has to undergo 20 years of actual sentence and 25 years of total sentence with remission whereas, in the present case the petitioner has undergone more than 24 years of actual imprisonment and 29 years of total imprisonment including remission till date.

3. It is asserted that vide communiation No. 11348, dated 29.03.2017 (Annexure P-4), respondent No.3 has returned the case of the petitioner to respondent No.2 with a direction to send his premature release case as and when he will complete his requisite sentence as per para 2 (aa) (iv). Thus, again after completion of requisite sentence as per para 2 (aa) (iv), the case of the petitioner for premature release was forwarded to the authorities but the same was deferred for two years vide order dated 22.03.2021 (Annexure P-5) on the ground that the life convict is a habitual offender and has also remained involved in five other serious criminal offences such as murder, decoity and under Arms Act etc and he does not deserve any concession at this stage from the Government.

4. The afore-said order dated 22.03.2021 (Annexure P-5) was challenged before this Court by way of criminal writ petition CRWP No.3822 of 2021 and the same was disposed off vide order dated 21.07.2022 (Annexure P-6) with a direction to respondent No.2- Director General of Prison, Haryana to decide the case of the petitioner in terms of the order dated 10.02.2022 passed by the Apex Court in Writ Petition (Criminal) No.439 of 2021 titled as "***Sharafat Ali Vs. State of Uttar Pradesh and another"*** within a period of two months from the date of receipt of certified copy of this order. A specific observation was made that the petitioner has undergone the actual sentence of more than 20 years and in total more than 25 years including remission earned by him as per clause 2(aa) of the Policy of the Haryana Government dated 12.04.2002, the case of the petitioner is fully covered with the policy.

5. Learned counsel for the petitioner points out that the case of the petitioner for premature release was again rejected by the authorities vide order

dated 31.03.2023 (Annexure P-7) on the same ground that he remained involved in five other criminal offences meaning thereby, he is a history sheeter and has no scope for any kind of reformation and on this ground the case of the petitioner was again deferred for one year.

6. The petitioner's case was reconsidered again and was rejected vide order dated 11.12.2023 (Annexure P-8) by the State level committee on the same ground. However, while rejecting the case of the petitioner it has been observed that he will remain inside the jail till his last breath.

7. Learned counsel for the petitioner has relied upon the Premature Release Policy dated 12.04.2002 (Annexure P-3) and submitted that after 2002, no other case has been registered against the petitioner. Hence, the ground for rejection that he is involved in five other serious criminal offences cannot be taken into consideration by the State level committee as those offences pertain to 20 years ago. Further more, the requisite sentence of 20 years actual sentence and 25 years of total sentence including remission has already been undergone by the petitioner.

8. Learned counsel for the petitioner has also relied upon the order dated 05.02.2024 passed in CRWP No.8232 of 2022 titled as ***"Pohlu @ Polu Ram Vs. State of Haryana and others***", wherein a co-ordinate Bench of this Court while deciding the bunch of petitions has held as under:-

> ***"(i) Involvement in other cases or jail offences.***
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> *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.*

(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).”*

9. Learned State counsel has opposed the prayer made in the present petition stating that the petitioner is hard core criminal and is involved in various other cases of similar nature. However, he does not controver the fact that the case of the petitioner is covered under the Premature Release Policy dated 12.04.2002 (Annexure P-3).

10. I have heard learned counsel for the parties and perused the record with their able assistance.

11. The primary objective underlying premature release is reformation of offenders and their rehabilitation and integration into the society, while at the same time ensuring the protection of society from criminal activities. These two aspects are closely interlinked. Incidental to the same is the conduct, behaviour and performance of prisoners while in prison. These have a bearing on their rehabilitative potential and the possibility of their being released by virtue of remission earned by them, or by an order granting them premature release. The most important consideration for premature release of prisoners is that they have become harmless and useful member of a civilized society.

12. *"Crime is an outcome of a distorted mind and jails must have an environment of hospital for treatment and care.'* Therefore, imprisonment is for reforming an *"anti-social"* personality into a social person. Imprisonment is for correction and not for destruction of personalities. However, the environment

inside prisons is not conducive to reform. It is necessary that prisoners come out of jail for a short period at regular intervals.

13. There is no dispute about the existence of the Premature Release Policy dated 12.04.2002 (Annexure P-3), which reads as under:-

(aa)	*Convicts whose death sentence has been commuted to life imprisonment and convicts who have been imprisoned for life having committed a heinous crime such as:-*	*Their case may be considered after completion of 20 years actual sentence and 25 years told sentence with remissions.*
(i)	*Murder after rape repeated/ chained rape/unnatural offences.*	
(ii)	*Murder with intention for the ransom*	
(iii)	*Murder of more than two persons*	
(iv)	*Persons convicted for second time for murder*	
(v)	*Sedition with murder*	
(a)	*Convicts who have been imprisoned for life having committed a heinous crime such as:-*	*Their cases may be considered after completion of 14 years actual sentence including undertrial period provided of such sentence including remissions is not less than 20 years.*
(i)	*Murder with wrongful confinement for extortion/robbery*	
(ii)	*Murder while undergoing life sentence.*	
(iii)	*Murder with dacoity.*	
(iv)	*Murder with offence under TADA Act, 1987.*	
(v)	*Murder with untouchability (Offences) Act,1955.*	
(vi)	*Murder in connection with dowry*	
(vii)	*Murder of a child under the age of 14 years.*	
(viii)	*Murder of a women*	
(ix)	*Murder after abduction or kidnapping.*	
(x)	*Murder exhibiting brutality such as cutting the body into piece of burning/dragging the body as*	

	evident from judgment of the Court.	
(xi)	*Persistent bad conduct in the prison.*	
(xii)	*Convicts who cannot for some definite reasons be prematurely release without danger to public safety.*	
(xiii	*Convicts who have been imprisoned for life under section 120-B IPC.*	
(xiv)	*Any other crime that the State Level Committee considers to be 'heinous' for reasons to be recorded in writing*	
(b)	*Adult life convicts who have been imprisoned for life but whose case are not covered under (aa) and (a) above and who have committed crime which are not considered heinous as mentioned in clause (aa) and (a) above*	*Their cases may be considered after completion of 10 years actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 14 years.*
(c)	*Juvenile life convicts below the age of 18 years at the time of commission of offence and whose cases are not covered under (aa) and (a) above and who have committed crime which are not considered heinous as mentioned in Clause (aa) and (a) and female life convicts. Juvenile life convicts who committed heinous crime as mentioned Clause (aa) and (a) above. Will be treated as par with adult life convicts and they will be considered as per provisions mentioned against (aa) and (a) above.*	*Their cases may be considered after completion of 8 years actual sentence including undertrial period provided that the total period of such sentence including remissions is not less than 10 years.*
(d)	*Persons sentence to life imprisonment inclusive of those convicted of crimes under (aa) and (a) above and in whose cases death sentence has been committed to life imprisonment but who suffer from a terminal disease like cancer or AIDS and 3rd stage of TB likely to result in death in the near future.*	*Their case may be considered for release on the report of the Medical Board designated by the Govt., Medical re-examination of the convicts should be done every three months after such release for the confirmation of the disease, condition of the release should contain a provision regarding periodical medical re-examination and re-admission to the prison if the*

		patient is not found to be suffering any longer or is on the road to recovery.
(e)	*Physically handicapped.*	*If the handicap existed before the crime, no special consideration will be given. In case a handicap develops after the sentence, the release may be considered after the convict has undergone actual sentence of 6 years provided that the handicap is of such a nature as to render him totally incapable of committing any offence and further render him incapable of looking after himself in the prison.*

14. As per para 2 (aa) (iv) of the afore-said policy, the petitioner has to undergo 20 years of actual sentence and 25 years of total sentence with remission whereas, in the present case the petitioner has undergone more than 24 years of actual imprisonment and 29 years of total imprisonment including remission till date, meaning thereby, his case is fully covered under the said policy.

15. Reliance can be placed upon the judgment of the Apex Court dated 06.09.2022 passed in Criminal Writ No. 336 of 2019 titled as ***'Rashidul Jafar @ Chota Vs. State of Uttar Pradesh & Anr.'*** wherein, it has held that:-

> *"16. 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 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.

17. Significantly, the policy has been amended to remove the requirement of convicts submitting an application for premature release and instead places the responsibility on the officers of the state to consider eligible prisoners. The prison administration, legal services authorities at the district and state level and officers of the police department and the state must diligently ensure that cases of eligible prisoners are considered on the basis of policy parameters. We have gained a distinct impression, based on the cases which have come before the court here and even earlier that there is a general apathy towards ensuring that the rights which have been made available to convicts who have served out their sentences in terms of the policy are realized. This results in the deprivation of liberty of those who are entitled to be released. They languish in overcrowded jails. Their poverty, illiteracy and disabilities occasioned by long years of incarceration are compounded by the absence of supportive social and legal structures. The promise of equality in our Constitution would not be fulfilled if liberty were to be conditional on an individual's resources, which unfortunately many of these cases provide hard evidence of. This situation must change and hence this court has had to step in. We now proceed to formulate peremptory directions.

18. We direct that:

(i) XX XX XX XX XX

(ii) In the event that any convict is entitled to more liberal benefits by any of the amendments which have been brought about subsequent to the policy dated 1 August 2018, the case for the grant of premature release would be considered by granting benefit in terms of more liberal amended para/clause of the policies. All decisions of premature release of convicts, including those, beyond the present batch of cases would be entitled to such a beneficial reading of the policy;"

16. The Supreme Court (Hon'ble 3 Judges Bench headed by Hon'ble CJI, DY Chandrachud) in the case of ***Raj Kumar Vs. The State of Uttar Pradesh*** Writ

Petition (Criminal) No. 36 of 2022 (SC) vide order dated 06.02.2023 observed as under:-

> *"7. Despite the judgment of this Court in Rashidul Jafar, cases were being repeatedly brought to this Court Article 32 of the Constitution where despite the convict having fulfilled the conditions of eligibility for the grant of premature release, cases were not being dealt with in terms of the policy.*
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> *XX XX XX XX XX XX*
>
> *13. 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."*

17. The State Level Committee while rejecting the case of the petitioner vide order dated 11.12.2023 (Annexure P-8) has observed that the petitioner has committed serious criminal offences.

18. This Court in *"**Gurbax Singh Vs. State of Haryana", 1994(3) RCR Criminal 342,*** has held that murder in itself is a heinous crime, but if 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. Para 5 of the judgment read as under:-

> *"5. I have heard the learned counsel for the parties and find that this petition deserves to succeed. I have gone through Annexure P-4 with the help of P-3 learned counsel for the parties and find that the case of the petitioner falls squarely within paragraph 2(b) of Annexure R-4. 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, it will be sent that paragraphs 2(a) deals with a situation where the murder is motivated by lust, greed or avarice, that are the cases of human instincts, or where it has been exceptionally brutal in its execution. A reading of Annexure P-3 would indicate that the incident took place on a petty but sudden quarrel between a father and son and as such fell in paragraph 2(b)."*

19. The State Level Committee while rejecting the case of the petitioner vide order dated 11.12.2023 (Annexure P-8) has directed that the petitioner shall remain in jail till his last breath. Passing of such order by the State Level Committee is in contravention of Supreme Court Judgment titled as ***Union of India Vs. V. Sriharan @ Murugan (2016) 7 SCC 1***. The committee does not have any power to prescribe the capital and alternate punishment or to alter the punishment given by the Trial Court and it is not open to Court, inferior to High Court and Supreme Court, while awarding sentence of life imprisonment to provide for any specific term of incarceration, or till end of convict's life. The relevant para is reproduced herein as under:-

> *"103. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial Court and confirmed by the Division Bench of the High Court, the concerned convict will get an opportunity to get such verdict tested by filing further appeal by way of Special Leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such*

specified grave offences and the imposition of penalty either death or life imprisonment when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed.

104. We, therefore, reiterate that, the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other Court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court.

105. Viewed in that respect, we state that the ratio laid down in ***Swamy Shraddananda [(2008) 13 SCC 767]*** *that a special category of sentence; instead of Death; for a term exceeding 14 years and put that category beyond application of remission is well founded and we answer the said question in the affirmative. We are, therefore, not in agreement with the opinion expressed by this Court in* ***Sangeet and Anr. v. State of Haryana, 2013 (2) SCC 452*** *that the deprival of remission power of the Appropriate Government by awarding sentences of 20 or 25 years or without any remission as not permissible is not in consonance with the law and we specifically overrule the same." (emphasis supplied)*

20. The said judgment has been followed by this Court in ***Savitri Vs. State of Haryana and others 2020 (3) RCR (Criminal) 182***. The relevant extract is reproduced herein as under:-

"11. Thus, after the judgment of the Constitution Bench of the Supreme Court in ***V. Sriharan (supra)****, it is not open to a court inferior to the High Court and Supreme Court, while awarding a sentence of life imprisonment under the Indian Penal Code to further provide for any*

specific term of incarceration, or till the end of a convict's life, or to direct that there shall be no remission, as an alternate to the death penalty. That power is available only with the High Courts and the Supreme Court. Consequently, the trial Court, in the instant case, while awarding the Petitioner the sentence of rigorous imprisonment for life could not have added the riders that it should be for the rest of her natural life or that she would not be entitled to any remission.

XX XX XX XX

14. Therefore, in terms of the law explained by the Constitution Bench of the Supreme Court in ***V. Sriharan (supra)****, the trial Court in its order dated 16th October 2018 awarding the sentence to the Petitioner of rigorous imprisonment for life was in error in adding the rider that it would be for the remainder of her natural life and without any remission."*

21. Life convicts should be eligible for release into society once they have served sufficient period of time in the prison to mark the seriousness of their offences. The law provides for executive remissions, which is completely based on discretion. Discretion is based on the basis of guidelines framed at state level. As an effective alternative to death penalty, imprisonment and specifically life imprisonment has been favoured by legal systems.

22. In view of the discussions made hereinabove, as well as the judicial enunciations, this Court is of the considered view that the case of the petitioner is fully covered under Para 2 (aa) (iv) of the policy (Annexure P-3).

23. Accordingly, the present petition is allowed.

(SANDEEP MOUDGIL)
JUDGE

01.07.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No