

(2022) 02 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : Criminal Writ Petition No. 11004 Of 2021

Daya Nand

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 17-02-2022

Acts Referred:

Constitution Of India, 1950 — Article 20, 21, 72, 142, 161, 226
Indian Penal Code, 1860 — Section 34, 302, 323, 324, 325
Arms Act, 1959 — Section 25
Code Of Criminal Procedure, 1973 — Section 432, 433, 433A

Citation : (2022) 02 P&H CK 0058

Hon'ble Judges : Sant Parkash, J

Bench : Single Bench

Advocate : D.N.Ganeriwala, Amreek Singh Narwal

Final Decision : Allowed

Judgement

,

Sant Parkash, J",

(The case has been taken up for hearing through video conferencing).,

1. The petitioner has filed the present petition under Article 226 of the Constitution of India for directing the respondents to release the petitioner,

prematurely in view of the Govt. Policy dated 12.04.2002 (Annexure P-2) and quashing of order dated 19.10.2021 (Annexure P-5) whereby the case,

of the petitioner for his premature release has been deferred.,

2. The petitioner along with other co-accused was arrested in case FIR No. 156 dated 03.12.1999 under Sections 302, 323, 324, 325 read with Section",

34 of the Indian Penal Code, 1860 and Section 25 of the Arms Act registered at Police Station Nathusari Chopta. The petitioner was tried for the",

aforesaid offences and after completion of trial, the petitioner was convicted and sentenced to undergo imprisonment for life by the Court of learned",

Additional Sessions Judge Sirsa vide order dated 17.05.2002.,

3. Feeling aggrieved, the petitioner assailed the aforesaid judgment by filing appeal CRA-D-436-DB-2002 which was also dismissed vide order dated",

01.11.2011.,

4. The petition has been opposed by the respondents/State in terms of reply filed by way of affidavit of Jagjit Singh, Inspector General of Prisons,"

Haryana, O/o the Director General of Prisons, Haryana",

5. Learned Counsel for the petitioner has submitted that the petitioner has undergone actual sentence of more than 10 years and total sentence of 14,

years with remissions and the case of the petitioner falls under the category 2(b) of the Premature Release Policy dated 12. 04.2002 of the Haryana,

Government. The respondents vide impugned order dated 19.10.2021 (Annexure P-5) have deferred the case of premature release of the petitioner,

for two years without citing any reason. Further detention of the petitioner is against the said Govt. policy and in violation of Article 21 of the,

Constitution of India. The petitioner is fulfilling all the conditions for grant of premature release as per the Govt. Instructions (Annexure P-2) and the,

present petition be allowed and the petitioner be set at liberty forthwith.,

6. On the other hand, learned State Counsel reiterating the contents of reply has submitted that the petitioner is not a law abiding person and remained",

involved in criminal offences repeatedly. 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, gravity, nature of offence, manner and circumstances under which the",

crime was committed. In support of his arguments learned Counsel for the State has placed reliance on judgments passed by Hon'ble Apex Court in,

'Maru Ram Vs. Union of India' AIR 1980 SC 2147, decided on 11.11.1980 ; 'Swami Shardhanand @ Murli Manohar Mishra Vs. State of Karnataka",

(SC) 2008(3) R.C.R. (Criminal) 772; W.P. (Crl.) No.48 of 2014 Union of India Vs. V. Sriharan @ Murugan & Ors. And SLP (Crl) No. 6467 of 2012,

Crl. M.P. No. 17082 of 2012 titled State of U.P. Vs. Sanjay Kumar.,

7. Learned State Counsel has further submitted that on completion of 12 years, 4 months and 7 days actual sentence and 14 years, 4 months and 28",

days total sentence as on 30.06.2021, the case of premature release of the petitioner was placed before the State Level Committee in its meeting held",

on 12.08.2021 for consideration. After considering the matter, the State Level Committee did not recommend the case of the convict for premature",

release keeping in view the nature of crime committed by the life convict as well as his involvement in three other grave criminal offences and his,

case for premature release was deferred for one year.,

8. It has been mentioned in the premature release policy itself that no convict has fundamental right of remission or shortening of sentence and the,

State Government, in exercise of its discretionary power of remission is to consider each case individually keeping in view all the relevant factors. The",

case for premature release of the petitioner will be re-considered after completion of one year subject to his good conduct during the deferred period,

after excluding the special parole period on account of Covid, if otherwise found eligible. Therefore, the present petition being devoid of any merits",

may be dismissed.,

9. In the present case, the petitioner has sought his premature release on the ground that as per policy dated 12.04.2002 which was prevalent at the",

time of his conviction, he has completed the required sentence for considering his case for pre-mature release. However, the respondents have",

deferred the case of the petitioner due to nature of crime committed by him and his involvement in three other grave criminal offences.,

10. The petitioner along with his co-accused had committed the murder of Bhagwana Ram by firing shot from pistol, attacked with 'kassi' and also",

gave hockey stick blows on the left shoulder and left elbow of the complainant. The petitioner also remained involved in three other cases containing,

serious offences.,

11. Hon'ble Apex Court in its judgments passed in Maru Ram and Swami Shardhananad (Supra) has held that a convict cannot claim premature,

release as a matter of right and it would be at the sole discretion of the Government to exercise the power conferred on it in accordance with law.,

12. In W.P. (Crl.) No.48 of 2014 Union of India Vs. V. Sriharan @ Murugan & Ors. it was held that the powers under Sections 432 and 433 of the,

Code of Criminal Procedure, 1973 are to be exercised by the Appropriate Government statutorily and it is not for this Court to exercise the said power",

and it is always left to be decided by the Appropriate Government.,

13. Further, in case, SLP (Crl) No. 6467 of 2012 Crl. M.P. No. 17082 of 2012 titled State of U.P. Vs. Sanjay Kumar as relied upon by learned State",

Counsel, Hon'ble Supreme Court has held as under :-",

â??.....Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years, rather it always meant as the whole natural life. This Court",

has always clarified that the punishment so awarded would be subject to any order passed in exercise of the clemency powers of the President of,

India or Governor of State, as the case may be. Pardons, reprieves and remissions are granted in exercise of prerogative power. There is no scope of",

judicial review of such orders except on very limited grounds for example non-application of mind while passing the order; non-consideration of,

relevant material; or if the order suffers from arbitrariness.,

The power to grant pardons and to commute sentences is coupled with a duty to exercise the same fairly and reasonably. Administration of justice,

cannot be perverted by executive or political pressure. Of course, adoption of uniform standards may not be possible while exercising the power of",

pardon. Thus, such orders do not interfere with the sovereign power of the State. More so, not being in contravention of any statutory or constitutional",

provision, the orders, even if treated to have been passed under Article 142 of the Constitution do not deserve to be labelled as unwarranted. The",

aforesaid orders have been passed considering the gravity of the offences in those cases that the accused would not be entitled to be considered for,

(b) Adult life convicts who have been imprisoned for

life but 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) 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

20. The case of the petitioner has been rejected/deferred for one year for re-consideration in view of the nature of crime and due to his involvement in,

three other criminal cases.,

21. Hon'ble Apex Court in its case Criminal Appeal No. 30 of 2005 titled as *State of Haryana Versus Mahender Singh and Others* decided on,

02.11.2007, has held as under :-",

32. A right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of",

India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder. Although",

no convict can be said to have any constitutional right for obtaining remission in his sentence, he in view of the policy decision itself must be held to",

have a right to be considered therefor. Whether by reason of a statutory rule or otherwise if a policy decision has been laid down, the persons who",

come within the purview thereof are entitled to be treated equally. It is now well-settled that any guidelines which do not have any statutory flavour,

are merely advisory in nature. They cannot have the force of a statute. They are subservient to the legislative act and the statutory rules.,

33. Whenever, thus, a policy decision is made, persons must be treated equally in terms thereof. A' fortiori the policy decision applicable in such cases",

would be which was prevailing at the time of his conviction.,

22. In view of the above referred judicial precedent, this fact is not disputed that whenever a policy decision regarding remission of sentence is made,",

persons must be treated equally in terms thereof and the case of the petitioner for his premature release is to be considered equally with other cases,

of life imprisonment where murder has been committed and the life convicts were released pre-maturely on their fulfillment of the criteria/conditions,

of the policy/instructions of the State Government.,

23. With regard to his involvement in other three cases, as discussed above, the petitioner was acquitted in two such cases and his sentence was",

undergone in one case.,

24. Further, as per Clause 4(i) of the pre-mature release policy dated 12.04.2002, the overall conduct of the life convict during his confinement in jail",

with specific emphasis on his/her conduct for the last five years from the date of his/her eligibility for consideration of pre-mature release is to be seen,

and the convict has not been punished for any jail offence during the last five years.,

25. On glancing through the reply filed on behalf of the respondent, it has become clear that the petitioner has not committed any offence during the",
last five years and nothing is adverse against him during the said period. His involvement in three other criminal cases is no valid ground to deny him,
the benefit of premature release as per the policy of the State Government particularly when he was acquitted in two of such cases and his conviction,
was undergone in the third case.,

26. In view of the above, the present petition is allowed and the impugned order dated 19.10.2021 (Annexure P-5) is set aside.",

27. The petitioner be set at liberty forthwith, if not required in any other case.",