

(2009) 08 P&H CK 0233

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-4933 of 2009

Sant Ram and others

APPELLANT

Vs

The State of Haryana and another

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2011) 1 ILR (P&H) 106 : (2010) 1 RCR(Criminal) 546

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Advocate : Sarvshri H.S. Jaswal, H.P.S. Aulakh, Krishan Singh, Surender Deswal and Varinder Singh Rana, for the Appellant; J.S. Toor, Additional Advocate General, Haryana, Mr. Deepak Girotra, Assistant Advocate General, Haryana and Mr. Amit Kaushik, Assistant Advocate General, Haryana, for the Respondent

Judgement

Harbans Lal, J.—This judgment shall dispose of Criminal Misc. No. M-4933 of 2009 - Sant Ram and others v. The State of Haryana and another, Criminal Misc. No. M-5321 of 2009 - Surender Singh v. The State of Haryana and another, Criminal Misc. No. M-5338 of 2009 - Rajender Singh v. The State of Haryana and another, Criminal Misc. No. M-5368 of 2009 - Balraj @ Bilia v. The State of Haryana and another, Criminal Misc. No. M-6357 of 2009 - Raibir @ Kala v. The State of Haryana and another, Criminal Misc. No. M-11333 of 2009 - Subhash v. The State of Haryana and others, Criminal Misc. No. M-12399 of 2009 - Rajesh v. State of Haryana and others, Criminal Misc. No. M-14304 of 2009 - Shamsheer Singh v. The State of Haryana and another, Criminal Misc. No. M-15178 of 2009 - Anil and others v. The State of Haryana and Criminal Misc. No. M-18878 of 2009, Gurdit Singh and others v. The State of Haryana and others as common question of law and fact is involved in all these cases.

Criminal Misc. No. M-4933 of 2009

This petition has been moved by Sant Ram, Balwant, Anchal and Risala @ Arsyal u/s 482 of the Code of Criminal Procedure seeking a direction to the respondents

to add the period of their parole towards the actual sentence undergone by them and for their release from jail forthwith.

2. The brief facts are that all the four petitioners are real brothers inter- se. They were convicted and sentenced in case FIR No. 144 dated 20.10.1996 registered under Sections 302/34 IPC at Police Station City Yamuna Nagar to undergo imprisonment for life u/s 302 of IPC vide judgment/order of sentence dated 19.1.1998 delivered by the Court of learned Additional Sessions Judge, Yamuna Nagar. On appeal to this Court by modifying the judgment/order of sentence, they were convicted u/s 304, Part II read with Section 34 of IPC and were sentenced to undergo rigorous imprisonment for eight years and to pay a fine of Rs. 1 lac each and in default of payment of fine, the defaulter was to further undergo rigorous imprisonment for six months vide judgment dated 15-10-2007 (Annexure P1). They maintained good conduct inside the jail and have not committed any jail offence. They have undergone 8 years of sentence including remissions and parole granted by the government from time to time and the denial to their release from the jail is in violation of Article 21 of the Constitution of India.

As averred in the reply, the petitioners on 19.3.2009 have not completed their requisite sentence. As and when, they complete the same they would be released.

Criminal Misc. No. M-5321 of 2009

3. This petition has been moved by Surender Singh u/s 482 of the Code of Criminal Procedure seeking his premature release, by counting the period of remissions and parole/furlough towards his total sentence.

4. The brief fact are that the petitioner was convicted and sentenced in case FIR. No. 40 dated 7.2.2000 registered under Sections 392, 394, 397 of IPC 25 and 54 of Arms Act at Police Station Ganaur, Sonapat to undergo imprisonment for a period of seven years and he has undergone actual sentence of five years. The benefit of remissions which the respondent-State has been, granting to the convicts has not been given to him so far. By counting the period of parole towards his actual sentence, he has completed seven years of his sentence and is thus entitled to be released.

As averred in the reply, the petitioner is presently on six weeks parole from 4.2.2009 to 19.3.2009 and he has undergone total sentence of 4 years 10 months and 8 days. He has earned 7 months and 10 days remissions during the aforesaid period. He has not done any type of work in the jail being a convict of rigorous imprisonment and thus, he could not earn the maximum remissions during the period of his confinement in the jail. However, he is entitled to only 1/4th of the actual sentence undergone as per para No. 645 of Punjab Jail Manual. He is claiming the benefit of remissions for the period from 26.7.2002 to 15.11.2004 during which he remained on bail. In view of order dated 27.3.2000 passed in Criminal Appeal No. 301 of 2000 (Arising out of SLP (CRL) No. 3697 of

1999 (Annexure R1), the bail period cannot be counted towards sentence.

Criminal Misc. M.-5338 of 2009

5. This petition has been moved by Rajender Singh u/s 482 of the Code of Criminal Procedure read with Article 226, of the Constitution of India seeking his premature release.

The brief facts are that vide judgment dated 6.9.1997, the petitioner was convicted and sentenced to undergo imprisonment for life u/s 302 of IPC by the learned Sessions Judge, Rohtak in case FIR No. 219 dated 27.9.1994 at Police Station Sampla. He was granted bail by Punjab and Haryana High Court, Chandigarh in Criminal Appeal No. 639 DB of 1997 on 28.9.2000. He remained on bail till his appeal was dismissed. He surrendered before the Superintendent District Jail, Karnal on 14.3.2001. The period during which he remained on bail has not been counted towards the remissions though in view of the observations made by this Court in order dated 28.11.2008 (Annexure P.7) passed in Criminal Misc. No. M-18417 of 2008 - Jai Parkash v. The State of Haryana and others, he was entitled to this benefit. He availed parole while undergoing the sentence as convict, but the period of parole has also not been counted towards his total sentence.

As averred in the reply, the petitioner has undergone total sentence of 8 years, 9 months and 4 days (7 years 11 months and 24 days actual sentence period + 1 year and 12 days remissions - 3 months and 2 days availed parole. He has remained on bail from 4.10.2000 to 13.3.2007. i.e., 6 years 5 months and 13 days. He is entitled to only 1/4th of the actual sentence undergone as per para No. 645 of the Punjab Jail Manual. He is not entitled for the benefit of remission for the period, he remained on bail.

Criminal Misc. No. M-5368 of 2009

6. This petition has been moved by Balraj @ Billa u/s 482 of the Code of Criminal Procedure seeking his premature release.

The brief facts are that the petitioner was convicted and sentenced to undergo imprisonment for ten years u/s 376 of IPC by the Court of learned Additional Sessions Judge, Jind vide his judgment dated 20.12.1998 in case FIR No. 132 dated 24.4.1988 registered u/s 376 of IPC at Police Station Saffaidon, District Jind. On appeal to this Court, his sentence was reduced to seven years vide judgment dated 8.5.2003. He has undergone actual period of sentence of six years including the period of parole and benefit of remission. He has been granted only 14 months and 22 days remissions, whereas he is entitled to all benefits of remissions, while being on bail. He has not been given the benefit of period of parole of 40 weeks towards his actual sentence. As per Annexure P.8, judgment dated 28.11.2008 delivered by this Court in case titled Jai Parkash v. State of Haryana and another, the bail period should be counted towards sentence.

In the reply filed by the respondents, it has been averred that the petitioner has remained on bail from 18.2.1989 to 5.11.2003. He has undergone total sentence of 6 years, 6 months and 1 day (6 years, 1 month and 27 days actual sentence period + 1 year, 3 months and 24 days remissions - 11 months 20 days availed parole). He is entitled to only 1/4th of the actual sentence undergone as per para 645 of the Punjab Jail Manual. As per available jail record, he has earned remissions of 1 year, 3 months and 24 days for the period, he remained inside the jail including parole/furlough after conviction as per the existing rule for granting remission. In view of Criminal Appeal No. 301 of 2000 (Arising Out of S.L.P (CRL.) No. 3697/1999 (annexed as Annexure R1), his bail period is not to be counted towards sentence.

Criminal Misc. No. M-6357 of 2009

7. This petition has been moved by Rajbir alias Kala u/s 482 of the Code of Criminal Procedure seeking directions to the respondents to add the period of his parole towards the actual sentence undergone by him and for his forthwith release.

The brief facts are that the petitioner was convicted and sentenced by the Court of learned Additional Sessions Judge, Sonapat to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 3,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months u/s 307 of IPC in case FIR No. 127 dated 26.3.1997 registered u/s 307 of IPC at Police Station Gohana, District Sonapat. On appeal to this Court, the judgment/order of sentence was modified vide judgment dated 21.3.2007 and the sentence was reduced to 5-1/2 years u/s 307 of IPC and the sentence with regard to fine was ordered to be maintained. He has undergone 4 years and 11 months of the actual sentence. He has also earned remissions from time to time. Therefore, he has already undergone the entire sentence, if the period of parole is added in his actual sentence as per the custody certificate dated 30.1.2009 (Annexure P.1). He has maintained good conduct inside the jail and has not committed any jail offence. He has undergone eight years of sentence including remissions and parole granted by the government from time to time and the denial of his release amounts to violation of Article 21 of the Constitution of India.

In reply, it has been averred that the petitioner has undergone total sentence of 5 years, 1 month and 9 days till 11.3.2009 including remissions of 7 months and 24 days. He has not completed sentence of years and 6 months. As such, the petition deserves to be dismissed.

Criminal Misc. No. M-11333 of 2009

8. This petition has been moved by Subhash u/s 482 of the Code of Criminal Procedure seeking his premature release by giving directions to the Director General of Prisons, Haryana - respondent No. 2 to verify the period undergone by him including remission granted under paras 633A, 639 and 644 of Punjab Jail Manual and under Article 161 of the Constitution of India.

The brief facts of the case are that the petitioner was convicted and sentenced to undergo rigorous imprisonment for ten years u/s 304-B of IPC by the Court of learned Additional Sessions Judge, Sirsa in FIR No. 267 dated 9.8.1993 registered u/s 304-B of IPC at Police Station Sadar Dabwali. On appeal to this Court, the sentence was reduced to seven years vide judgment dated 3.4.2007 passed by this Court in Criminal Appeal No. 334-SB of 1995 titled as Subhash v. State of Haryana. He has been getting remissions from 30.5.1995 to 10.6.1997 and 23.1.2007 till date as per Government of Haryana notifications issued from time to time and entered in his history ticket. He has undergone 4 years and 11 months of the actual sentence but after adding the remissions and the parole period, he has undergone seven years sentence. He has not been punished for any jail offence. He has maintained good conduct inside the jail. He has almost undergone his whole sentence.

In reply, it has been averred that the petitioner has undergone 6 years and 27 days of his total sentence including remissions and excluding parole period as on 10.5.2009. He is required to undergo a total sentence of seven years including remissions earned and excluding parole period which he has not completed as yet and, hence, this petition is liable to be dismissed.

Criminal Misc. No. M-12399 of 2009

9. This petition has been moved by Rajesh u/s 482 of the Code of Criminal Procedure read with Articles 226/227 of the Constitution of India seeking direction to respondent No. 3 (Superintendent of Jail, District Jail, Gurgaon) to include all the remissions (remissions granted to convict under Para 635, 638, 639 and 644 of Punjab Jail Manual and under Article 161 of the Constitution of India along with suspension/remittance/commutation under Sections 432 and 433 of the Code of Criminal Procedure in his custody period and to release him as he has completed requisite sentence after adding his remission period in the custody.

The brief facts are that the petitioner was convicted and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 2,000/- under Sections 148, 326, 324 and 323 of IPC or in default of payment of fine, to further undergo imprisonment for six months by the Court of learned Additional Sessions Judge, Faridabad vide judgment/order of sentence dated 11.10.1999 arising out of FIR No. 492 dated 25.11.1996 registered under Sections 148, 326, 324, 323, 302 and 506 of IPC at Police Station Sadar Palwal. The appeal preferred to this Court was dismissed vide order dated 14.10.2005. He has completed around 3 years and 11 months of imprisonment as per Annexure P1 and during this period, he has not violated the rule of the prison. If the remission earned by him is added to the actual sentence undergone by him, it will amount to more than the period, he is required by law to undergo. In jail, he had been doing work (Musakat) as Class `B" prisoner. The entry of remissions was made in his history ticket. He has earned 1/4th of the remission as provided in Punjab Jail Manual besides the special remission granted by the State under Article 161 of the

Constitution of India and under Sections 432 and 433 of the Code of Criminal Procedure.

In reply, it has been averred that the remission which could be granted to the petitioner has already been given according to the rules and regulations. He has availed parole for four times. The period of his parole shall not count towards his total sentence. As such, the excess remission of 1 month and 10 days awarded to the petitioner for parole period was deducted from his total earned remission as per Punjab Jail Manual para Nos. 637 and 643. He was punished and B-Class facility was withdrawn for possessing a prohibited article, i.e., mobile phone in jail. This punishment was accorded by the Director General of Prisons, Haryana vide his letter No. 12399 dated 28.8.2006 and was sent for Judicial Appraisal to the District & Sessions Judge, Gurgaon. In the meantime, he approached this Court to provide the facilities available to him in accordance with law and Jail Manual.

Criminal Misc. No. M-14304 of 2009

10. This petition has been moved by Shamsheer Singh u/s 482 of the Code of Criminal Procedure seeking his premature release.

The brief facts are that the petitioner was convicted and sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs. 2,000/- and in default of payment of fine, to further undergo rigorous imprisonment for six months by the Court of learned Additional Sessions Judge, Karnal under Sections 304 Part I/323/324/34 IPC vide judgment dated 7.5.1993 in case FIR No. 280 dated 23.6.1990, registered under Sections 304 Part- I/323/324/34 IPC at Police Station Assandh, District Karnal. On appeal to this Court, the judgment/order of sentence was modified and the sentence was reduced to seven years. The petitioner has undergone actual sentence of 5 years and 2 months in custody. By counting the period of his parole towards the actual sentence, he has completed the period of seven years sentence and he is entitled to be released immediately. The respondent-State has been issuing circulars from time to time for which the remission has been granted to all the convicts who are undergoing sentence in various jails in State of Haryana and this benefit is extended to those convicts also, who are on bail under the order of the Court from time to time.

In reply, it has been averred that the petitioner has undergone a total sentence of 5 years, 7 months and 24 days (5 years, 3 months and 20 days actual sentence period + 0 years, 5 months and 2 days remissions 28 days availed parole). Therefore, the petitioner has not undergone the awarded sentence of seven years rigorous imprisonment. He will be released approximately in the last week of November, 2010. He is claiming the benefit for remission for the period in which he remained on bail. Keeping in view the above said orders, the petitioner is not entitled for the benefit of remission for the period he remained on bail.

Criminal Misc. No. M-15178 of 2009

11. In this application, addressed to Hon'ble the Chief Justice, Punjab and Haryana High Court, Chandigarh, the petitioners, namely, Anil son of Ram Kishan, Anil @ Neela son of Karan Singh, Rajesh son of Sube Singh, Sanjay son of Ratan Singh, Rajesh son of Om Parkash, Surinder son of Balwan Singh and Nawab son of Ratan Singh have submitted that the period of parole which they have availed is also a part of sentence and by counting the same towards their custody period, they may be released.

In reply, it has been averred that the petitioners were sentenced to undergo life imprisonment on 28.5.2004 in case FIR No. 259 dated 4.9.2000 registered under Sections 302/148/149/307/325 IPC at Police Station Safidon by the order of learned Additional Sessions Judge-II, Jind. On appeal to this Court, the sentence has been reduced to seven years rigorous imprisonment u/s 304 Part-II/323/149 IPC with a fine of Rs. 6,000/- and in default of payment of fine, the defaulter to further undergo rigorous imprisonment for one year and three months vide order dated 6.10.2005. The petitioner has undergone 6 years and 25 days of his sentence including remission (1 year, 5 months and 1 day) and excluding parole period (8 months and 12 days) of his total sentence. As per the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 u/s 3(3), release on parole period shall not count towards the total period of sentence of a prisoners as per Annexure R-1 and as such, this petition may be dismissed.

Criminal Misc. No. M-18878 of 2009

12. This petition has been moved by Gurdit Singh, Prem Singh and Lakhwinder Singh sons of Surain Singh u/s 482 of the Code of Criminal Procedure seeking direction to the respondents to add their period of parole/furlough towards the actual sentence undergone by them and to release them from jail forthwith.

The brief facts are that petitioner were convicted and sentenced to undergo rigorous imprisonment for life by the Court of learned Additional Session Judge, Sirsa vide judgment dated 7.2.2000 in case FIR No. 139 dated 7.4.1998 registered under Sections 302/307/324/326/323/148/149 IPC at Police Station Raina and they were readmitted on 29.5.2009 in District Jail, Sirsa on dismissal of Criminal Appeal No. 152-DB of 2000 by this Court vide order dated 21.4.2009 and were convicted u/s 304 Part-II of IPC and sentenced to undergo rigorous imprisonment for eight years. That if the benefit of remissions including parole/furlough is added to their actual sentence, they will be out of jail. In Criminal Misc. No. 19131 of 2000 - Duni Ram v. State of Haryana, it has been held by this Court on 23.11.2004 that the period of parole is to be counted towards actual sentence undergone by the prisoner.

In reply, it has been averred that the petitioners are required to undergo the total sentence of eight years including remissions earned (should not exceed to 1/4 of total sentence) and excluding parole period which they have not completed as yet. In case Duni Ram v. State of Haryana, the respondents could not place the relevant ruling before this Court and hence the order passed

therein is not applicable to the facts of the present case. As per Section 3(3) of Haryana Good Conduct Prisoner (Temporary Release) Act, 1988, the period of parole cannot be counted towards the period of sentence of the petitioner. As held by Hon'ble the Supreme Court in order dated 19.2.2002 in Criminal Appeal No. 271 of 2002 (Arising out of S.L.P (Crl.) No. 4361 of 2000 - Avtar Singh v. State of Haryana and another, 2002 (1) RCR (Cri.) 786, the petitioner is required undergo actual as well as the total sentence of eight years including remissions earned and excluding parole period. The convict can also avail remission only to the extent 1/41th of his sentence undergone. Hence, this petition may be dismissed.

13. I have heard the learned counsel for the parties, besides perusing the record with due care and circumspection.

It has been argued on behalf of the petitioners that in view of the observations rendered in re : Ram Avtar Khatik and others v. State of Rajasthan and another, 2008 (4) RCR (Cri.) 566 (Rajasthan), the parole as well as bail period should be counted towards total sentence. It is further argued that in view of order dated 28.11.2008 passed by this Court in Criminal Misc. No. M-18417 of 2008 titled Jai Parkash v. State of Haryana and another, the benefit of remission qua the period the petitioner remained on bail should be granted.

14. On behalf of the respondents, it has been maintained that as ruled Harish Makhija v. State of U.P., (1987) 3 SCC 432 , the period of parole cannot be taken into, account in counting the period of detention. Further in view of Avtar Singh Vs. State of Haryana and Another, , the period of temporary release is not to be counted towards the total sentence. Further as held by this Court in case Jinda v. State of Haryana, 2006 (3) RCR (Cri.) 204, as per Section 3(3) of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, the period of release of a prisoner on parole shall not count towards total period of sentence.

15. The points which require consideration are these : (a) Whether the bail/parole/furlough period is to be counted towards the actual sentence or total sentence or both; (b) Whether a convict while on bail, earns remission, if so, of which nature ?

Section 432 of the Code of Criminal Procedure reads as under :-

432. Power to suspend or remit sentences - (1) When any person has been sentenced to punishment for an offence, the appropriate Government may, at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence omit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the appropriate Government for the suspension or remission of a sentence, the appropriate Government may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or

refused, together with his reasons for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer, without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this Section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentence and the conditions on which petitions should be presented and dealt with :

Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and :-

(a) where such petition is made by the person sentenced, it is presented through the officer-in-charge of the jail; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

(6) The provisions of the above sub-sections shall also apply to any order passed by a criminal Court under any Section of this Code or of any other law which restricts the liberty of any person or imposes any liability upon him or his property.

(7) In this Section and in Section 433, the expressions "appropriate Government" means, -

(a) in cases where the sentence is for an offence against, or the order referred to in sub-section (6) is passed under any law relating to a matter to which the executive power of the Union extends, the Central Government;

(b) in other cases, the Government of the State within which the offender is sentenced or the said order is passed.

Section 433 of the Code of Criminal Procedure reads as under :-

433. Power to commute sentence. - The appropriate Government may, without the consent of the person sentenced, commute-

(a) a sentence of death, for any other punishment provided by the Indian Penal

Code (45 of 1860);

(b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;

(c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;

(d) a sentence of simple imprisonment, for fine.

433A. Restriction on powers of remission or commutation in certain cases. - Notwithstanding anything contained in Section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has been commuted u/s 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

16. Article 161 of the Constitution also grants power to the Governor to grant pardons etc. which reads as under :-

161. Power of Governor to grant pardons, etc. and to suspend, remit or commute sentences in certain cases. - The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

In re : State of Haryana v. Mohinder Singh, 2000 (1) RCR (Cri.) 627, the Apex Court observed as under :-

15. "Furlough" and "parole" are two distinct terms now being used in the Jail manuals or laws relating to temporary release of prisoners. These two terms have acquired different meanings in the statute with varied results. Dictionary meanings, therefore, are not quite helpful. In this connection we may refer to the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 which has repealed the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962. Punjab Act was earlier applicable in the State of Haryana. Language of both the Acts is same and it may be useful to refer Sections 3 and 4 of any of these two Acts to understand the difference between parole and furlough :-

3. Temporary release of prisoners on certain grounds. -

(1) The State Government may, in consultation with the District Magistrate or any other officer appointed in this behalf, by notification in the Official Gazette and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2), any prisoner, if the State Government is satisfied that -

(a) a member of the prisoner's family had died or is seriously ill or the prisoner himself is seriously ill; or

(b) the marriage of prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister's son or daughter is to be celebrated; or

(c) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation on his land or his father's undivided land actually in possession of the prisoner; or

(d) it is desirable to do so for any other sufficient cause.

(2) The period for which a prisoner may be released shall be determined by the State Government so as not to exceed -

(a) where the prisoner is to be released on the ground specified in clause (a) of sub-section (1), three weeks;

(b) where the prisoner is to be released on the ground specified in clause (b) or clause (d) of sub-section (1), four weeks; and

(c) where the prisoner is to be released on the ground specified in clause (c) of sub-section (1), six weeks :

Provided that the temporary release under clause (c) can be availed more than once during the year, which shall not, however, cumulatively exceed six weeks.

(3) The period of release under this Section shall not count towards the total period of sentence of a prisoner.

(4) The State Government may, by notification, authorise any officer to exercise its powers under this Section in respect of all or any other ground specified thereunder.

4. Temporary release of prisoners on furlough. - (1) The State Government or any other officer authorised by it in this behalf may, in consultation with such other officer as may be appointed by the State Government, by notification, and subject to such conditions and in such manner as may be prescribed, release temporarily, on furlough, any prisoner who has been sentenced to a term of imprisonment of not less than four years and who -

(a) has, immediately before the date of his temporary release, undergone continuous imprisonment for a period of three years, inclusive of the pre-sentence detention, if any;

(b) has not during such period committed any jail offence (except an offence punished by a warning) and has earned at least three annual good conduct remissions :

Provided that nothing herein shall apply to a prisoner who -

(i) is a habitual offender as defined in sub-section (3) of Section 2 of Punjab Habitual Offenders (Control and Reform) Act, 1952; or

(ii) has been convicted of dacoity or such other offence as the State Government

may, by notification, specify.

(2) The period of furlough for which a prisoner is eligible under sub-section (1) shall be three weeks during the first year of his release and two weeks during each successive year thereafter.

(3) Subject to the provisions of clause (d) of sub-section (3) of section 8 the period of release referred to in sub-section (1) shall count towards the total period of the sentence undergone by a prisoner.

16. It would be thus seen that when a prisoner is on parole his period of release does not count towards the total period of sentence, while when he is on furlough he is eligible to have the period of release counted towards the total period of his sentence undergone by him.

17. Chapter XX of the Punjab Jail Manual as applicable in the State of Haryana contains remission system. Paras 633, 633-A, 635, 637, 644 and 645 are relevant for our purpose which we set out hereunder :-

633. Cases in which ordinary remission not earned. - No ordinary remission shall be earned in the following cases, namely :-

(1) in respect of any sentence of imprisonment amounting, exclusive of any sentence passed in default of payment of fine, to less than three months;

(2) in respect of any sentence of simple imprisonment except for any continuous period not being less than one month during which the prisoner labours voluntarily;

633-A. Ordinary remission not earnable for certain offences committed after admission to jail. - If a prisoner is convicted of an offence committed after admission to jail u/s 147, 148, 152, 224, 302, 304, 304-A, 306, 307, 308, 323, 324, 325, 326, 332, 333, 352, 353 or 377 of the Indian Penal Code, or of an assault committed after admission to Jail on a warder or other officer or u/s 6 of the Good Conduct Prisoners Probational Release Act, 1926 (X of 1926), the remission of whatever kind earned by him under these rules up to the date of the said conviction may, with the sanction of the Inspector-General of Prisons, be cancelled.

635. Scale of award of remission. - Ordinary remission shall be awarded on the following scale :-

(a) two days per month for thoroughly good conduct and scrupulous attention to all prison regulation.

(b) two days per month for industry and the due performance of the daily task imposed.

637. Application of remission of system. - Subject to the provisions of paragraph 634 remission under paragraph 635 shall be calculated from the first day of the calendar month next following the date of prisoner's sentence; any prisoner who

after having been released on bail or because its sentence has been temporarily suspended is afterwards readmitted in the jail shall be brought under the remission system on the first day of the calendar month next following his readmission, but shall be credited on his return to jail with any remission which he may have earned previous to his release on bail or the suspension of his sentence. Remission under paragraph 636 shall be calculated from the first day of the next calendar month following the appointment of the prisoner as convict warder, convict overseer or convict night watchman.

644. Special remission. - (1) Special Remission may be given to any prisoner whether entitled to ordinary remission or no other than a prisoner undergoing a sentence referred to in paragraph 632, for special service as for example, -

For the existing para the following shall be substituted.

(1) Special remission may be given to any prisoner whether entitled to ordinary remission or not other than a prisoner undergoing a sentence referred to in paragraph 632, for special services as for example :

(a) assisting in detecting or preventing breaches of prison discipline or regulations,

(b) success in teaching handicrafts,

(c) special excellence in, or greatly increased out-turn of work of good quality,

(d) protecting an officer of the prison from attack,

(e) assisting an officer of the prison in the case of outbreak of fire or similar emergency,

(f) economy in wearing clothes,

(g) donating blood to the Blood Bank provided that the scale of special remission for this service shall be fifteen days for each occasion on which blood is donated subject to the limit laid down in sub para (3).

(h) voluntarily undergoing vasectomy operation by a prisoner, having three children, provided that the scale of special remission for such service shall be 30 days, subject to the limits laid down in sub-para (3).

(2) Special remission may also be given to any prisoner released under the Good Conduct Prisoners Probational Release Act, 1920 for special services as :

(i) Special excellence in, of greatly increased outturn or god quality,

(ii) Assisting employer in case of out-break or fire or protecting his life or property from theft and other meritorious services.

(3) Special remission may be awarded :

(i) by the Superintendent to an amount not exceeding three days in one year.

(ii) by the Chief Probation Officer in the case of prisoners released under the provisions of the Good Conduct Prisoners Probational Release Act, 1926 to an amount not exceeding 30 days in one year.

(iii) by the Inspector-General of the Local Government to an amount not exceeding six, days in one year.

Explanation. - For the purpose of this rule, years shall be reckoned from the date of sentence and any fraction of a year shall be reckoned as a complete year.

(4) An award of special remission shall be entered on the history ticket of the prisoner as soon as possible after it is made, and the reasons for every award of special remission by a Supdt. shall be briefly recorded, and in case of prisoners released under the Good Conduct Prisoners Probational Release Act, 1926, such entries and reasons thereof shall be recorded by the Probation Officer.

645. Total remission not to exceed one-fourth part of sentence. - The total remission awarded to a prisoner under all these rules shall not without the special sanction of the Local Government, exceed one-fourth part of his sentence :

Provided in very exceptional and suitable cases the Inspector-General of Prisons may grant remission amounting to not more than one-third of the total sentence.

17. In re : State of Haryana v. Karambir Singh, 2001 (3) Cri 388, the Apex Court observed that under sub-section (3) of Section 3 of Haryana Good Conduct Prisoner (Temporary Release) Act, 1988, the period of release on parole shall not be counted towards the total period of sentence. In case Sunil Fulchand Shah etc. v. Union of India, 2002 (2) RCR (Cri.) 176, the Supreme Court observed as under :-

10. Bail and parole have different connotations in law. Bail is well understood in criminal jurisprudence and Chapter XXXII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bails to release the accused from internment though the Court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word `Bail' is surety. In Halsbury's Laws of England, 4th Ed., Vol. 11, para 166, the following observations succinctly brings out the effect of bail.

The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned.

11. "Parole", however, has a different connotation than bail even though the substantial legal effect of both bail and parole may be the release of a person from detention or custody. The dictionary meaning of "Parole" is :

The concise oxford dictionary - new edition

The release of a prisoner temporarily for a special purpose or completely before the expiry of sentence, on the promise of good behaviour; such a promise, a word of honour.

Black's law dictionary - Sixth Edition

Release from Jail, prison or other confinement after actually serving part of sentence; conditional release from imprisonment which entitles parolee to serve remainder of his term outside confines of an institution, if he satisfactorily complies with all terms and conditions provided in parole order.

According to The Law Lexicon, (P. Ramanatha Aiyar's The Law Lexicon with Legal Maxims, Latin Terms and Words & Phrases; p. 1410), "parole" has been defined as :

A parole is a form of conditional pardon, by which the convict is released before the expiration of his term, to remain subject, during the remainder thereof, to supervision by the public authority and to return to imprisonment on violation of the condition of the parole.

According to Words and Phrases (Permanent Edition); Vol. 31, pp. 164, 166, 167 :

"Parole" ameliorates punishment by permitting convict to serve sentence outside of prison walls, but parole does not interrupt sentence. People ex rel. Rainone v. Murphy, 135 N.E. 2d 567; 571, 1 N. Y. 2d 367, 153 N.Y.S. 2d 21, 26.

"Parole" does not vacate sentence imposed, but is merely a conditional suspension of sentence. Wooden v. Goheen, Ky., 255 S.W. 2d 1000, 1002.

A "Parole" is not a "suspension of sentence," but is a substitution, during continuance of parole, of lower grade of punishment by confinement in legal custody and under control of warden within specified prison bounds outside the prison, for confinement within the prison adjudged by the court. Jenkins v. Madigan, C.A. Ind., 211 F.2d 904, 906.

A "Parole" does not suspend or curtail the sentence originally imposed by the Court as contrasted with a commutation of sentence which actually modifies it.

12. In this country, there are no statutory provisions dealing with the question of grant of parole. The Code of Criminal Procedure does not contain any provision for grant of parole. By administrative instructions, however, rules have been framed in various States, regulating the grant of parole. Thus, the action for grant of parole is generally speaking an administrative action. The distinction between grant of bail and parole has been clearly brought out in the judgment of

this Court in State of Haryana and Others Vs. Mohinder Singh, , to which one of us (Wadhwa, J.) was a party. That distinction is explicit and I respectfully agree with that distinction.

13. Thus, it is seen that "parole" is a form of "temporary release" from custody, which does not suspend the sentence or the period of detention, but provides conditional release from custody and changes the mode of undergoing the sentence.

18. In re : Ramehar v. State of Haryana, 1995 (1) RCR (Cri.) 686, while dealing with the scope of Section 3(3) of Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 as well as Section 433-A of the Code of Criminal Procedure, 1973, this Court held that the period of parole was to be deducted not from actual sentence undergone but from total period of sentence, i.e., actual sentence remissions earned by the petitioner. Further in re : Partap v. State of Haryana, 1995 (3) RCR (Cri.) 466, this Court held that the period spent on parole can be included while calculating the actual sentence undergone by the convict, but said period can not be included while calculating the total period of imprisonment. In case Chander Singh v. State of Haryana and another, 1996 (1) RCR (Cri.) 633, this Court held that the period spent on parole would count towards the period of actual sentence undergone by the life convict. In case Avtar Singh v. State of Haryana and another, 2002 (1) RCR (Cri.) 786 the Supreme Court hold that the Constitution Bench has clearly held that though ordinarily the period of temporary release of a prisoner on parole needs to be counted towards the total period of detention but this condition can be curtailed by legislative act, rules, instructions or terms of grant of parole.

19. In the letter/circular dated 12.4.2002 bearing Memo No. 36/135/91- 1JJ(II) issued by the Financial Commissioner & Principal Secretary to Government, Haryana, Jails Department to the Director General of Prisons, Haryana, Manimajra, Chandigarh on the subject of policy regarding pre-mature release of life convicts recorded a note that the period spent on parole will, be counted towards the period of actual sentence, but has to be excluded from, the total period of sentence, as per judgment of the Hon"ble Punjab and Haryana High Court in Criminal Writ Petition No. 108/1987 titled as Faquir Singh v. State of Punjab and another, reported in 1988 (1) RCR (Cri.) 558." In notification dated 11.8.2008 purportedly issued by the Haryana Government, Jails and Judicial Department, the formula for calculating a period of sentence undergone has been given as under :-

A person convicted and sentenced for life imprisonment on 1.1.1990 had completed his 14 years actual sentence on 31.12.2003 and during the above said sentence period, he had availed parole for 14 months, his actual sentence undergone will be treated as 14 years and not as 12 years, 12 months. If during this period, he has earned five years total remission, his total sentence period will be calculated as under :

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Under Trial Period :

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Period of sentence undergone :

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Add Remission earned :

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Less parole period

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Total sentence undergone

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His case will be eligible for premature release only when he completes 20 years of total sentence.

20. u/s 3 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988, the State Government can temporarily release a prisoner for a specified period if the Government is satisfied that (i) any member of his family had died or

seriously ill or the prisoner himself is seriously ill or (ii) marriage of himself, his son, daughter etc. is to be celebrated or (iii) such release is necessary for ploughing, sowing or harvesting or carrying on any other agricultural portion on his land or his father's undivided land actually in possession of the prisoner and (iv) is desirable to do so for any other sufficient cause. The period of release is to be determined by the State Government in accordance with sub-section (2).

Sub-section (3) of the Act provides that (period of release under this Section sentence, shall not be counted towards the total period of sentence of prisoner. u/s 4, a prisoner who has been sentenced to a term of imprisonment of less than 4 years cannot be temporarily released on furlough unless he has undergone continuous imprisonment for a period of three years and has not committed any jail offence (except an offence punished by warning and has also earned at least three annual good conduct remissions. This Section also provides that the benefit of furlough cannot be granted to the class of prisoners mentioned in proviso to sub-section (1). The period of temporary release has been fixed in sub-section (2). It is specifically provided in sub-section (3) that period of temporary release on furlough shall be counted towards the total period of the sentence undergone by a prisoner. The legislature for the purpose of temporary release has created two classes of prisoners. A combined reading and comparative study of Section 3 as well as 4 of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 would reveal that the conditions of temporary release on furlough u/s 4 *ibid* is more rigorous and a prisoner shall not be entitled to such temporary release unless he condition laid down in the said Section, whereas in Section 3 *ibid*, no such rigorous condition has been imposed. This apart, certain classes of prisoners cannot get the benefit of furlough.

21. It can be reasonably culled out of the afore-quoted case law, Paragraph of Punjab Jail Manual, circulars that the parole period counts towards the actual sentence but is subtracted from the total sentence. On the other hand, furlough period count towards both the actual as well as total sentence and is not subtracted. In view of Section 4 *ibid*, Parole is a special leave. Parole is a part of actual sentence, but it is to be deducted from total sentence i.e., actual sentence + remissions. Parole can only be added towards the total sentence, if there is a specific legislative enactment to the said effect. However, in the States of Punjab and Haryana, there is no such specific legislative enactment. The rules/instructions provide that in both these states, parole period will not count towards total sentence. For Chandigarh, rules framed by State of Punjab are applicable. As per paragraph No. 643 of the Punjab Jail Manual 3rd Edition, no person shall receive ordinary remission for calendar month in which he is released. The period during which the accused/convict remained on bail is not to be counted towards the actual or total sentence. A glance through the order dated 23.11.2004 (Annexure P3 in Criminal Misc. No. M-18878 of 2009) passed by this Court in Criminal Misc. No. 19131 of 2004 bearing caption Duni Ram v. State of Haryana and another would reveal that the Assistant Advocate General, Haryana appearing on behalf of the respondents had not cited any case law to

the contrary. Furthermore, in that case too, the direction was given to the respondents to add the period of parole/furlough of the petitioner towards the actual sentence of imprisonment undergone by him. There was no direction to count such period towards total sentence of the petitioner.

22. Coming to the question of application of remission from paragraph 637 of Punjab Jail Manual, as reproduced in verbatim in the earlier part of this judgment, it is crystal clear that a convict on bail is not entitled to the benefit of remission. In fact, this question is no longer *res integra* as it is squarely covered by *Jai Prakash and Others Vs. State of Haryana and Others*, . While considering the scope of the aforementioned paragraph, the Supreme Court held as under :-

On a reading of the aforesaid provision, it is manifest that a prisoner, who has been released on bail or whose sentence has been temporarily suspended and has afterwards been readmitted in jail will be brought under remission system on the first day of the calendar month next following his re-admission. In other words, a person is not eligible for remission of sentence during the period, he is on bail or his sentence is temporarily suspended. The submission that the petitioners who were temporarily released on bail are entitled to get the remission earned during the period they were on bail, is not at all sustainable.

23. Whether a prisoner is entitled to special remissions announced by the State Government during the period, when he remained on bail? The conviction and sentence are two separate terms. The moment a person is convicted, he becomes stigmatic. He is a convict. If he is granted bail by the appellate court, it is so by the virtue of the provisions of Section 389 of Cr.P.C and his sentence stands suspended. If his conviction is not suspended with the dismissal of his/her appeal, the stigma is not wiped off. Paragraph 637 *ibid* does not as such over-ride remissions, which are announced by the State Government by way of special remissions. The object of those special remissions is totally different. In *re : Jai Parkash (supra)*, the Supreme Court held that, this Court is of the opinion that the petitioners are entitled to the benefit of special remissions, which have been announced by the State Government during the period when they remained on bail under the orders of the Supreme Court irrespective of the fact that they were not in custody.

24. Harking back to the order dated 28.11.2008 (Annexure P7 Criminal Misc. No. M-5338 of 2009 and others) passed by this Court in Criminal Misc. No. M- 18417 of 2008, *Jai Parkash v. State of Haryana and another*, his Lordship was pleased to grant the benefit of remissions announced from time to time upto 11.9.2001 which is obviously in consonance with the provisions of paragraph 637 *ibid*.

25. In view of the preceding discussion, all these petitions are disposed of with a direction to the respondents to decide the case of each, petitioner individually by applying the case law/rules/paragraphs of Punjab Jail Manual referred to hereinbefore within a period of two months from the date of receipt of the certified copy of this judgment by passing speaking orders. The State counsel is

directed to communicate a copy of the judgment to the respondents forthwith. The copy of this judgment shall be issued to the learned State Counsel under the signatures of the court.