

**(2019) 09 P&H CK 0115**

**In the Punjab And Haryana At Chandigarh**

**Case No : Civil Writ Petition No. 9837 Of 2018 (O&M)**

Subeg Singh

APPELLANT

Vs

Union Territory Of Chandigarh And Others

RESPONDENT

**Date of Decision : 18-09-2019**

**Acts Referred:**

Indian Penal Code, 1860 — Section 34, 120B, 121, 121A, 123, 148, 149, 217, 223, 224, 302, 304, 304(b), 323, 325, 347, 375, 379, 380, 392, 451, 452, 506, 511  
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 22, 25A, 61, 85  
Punjab Jail Manual, 1996 — Section 431  
Code Of Criminal Procedure, 1973 — Section 432, 433, 433A  
Untouchability (Offences) Act, 1955 — Section 302  
Constitution Of India, 1950 — Article 20, 21, 161

**Citation : (2019) 09 P&H CK 0115**

**Hon'ble Judges : Gurvinder Singh Gill, J**

**Bench : Single Bench**

**Advocate : Vijay K. Jindal, Sukant Gupta, Kirat Singh Sidhu**

**Final Decision : Dismissed**

## Judgement

Gurvinder Singh Gill, J

1. The petitioner has approached this Court seeking quashing of order dated 2.7.2015 (Annexure P-8) and order dated 14.9.2016 (Annexure P-10) whereby the case of the petitioner for his premature release has been rejected.

2. The petitioner stands convicted vide judgment dated 18.5.1999 (Annexure P-1) passed by learned Sessions Judge, Chandigarh for having committed offences punishable under Sections 120-B, 302, 392 and 380 of IPC whereby he was sentenced to undergo imprisonment as follows :-

Conviction under section

Sentence Imposed

In default of payment of fine

120- B IPC

R.I. for life and fine of

` 1000/-

Further R.I. for 6 months.

302 IPC

R.I. for life and fine of

` 1000/-

Further R.I. for 6 months.

392 IPC

R.I. for life and fine of

` 1000/-

Further R.I. for 6 months.

380 IPC

R.I. for 5 years and fine of

` 1000/-

Further R.I. for 6 months.

3. The appellant preferred an appeal in this Court challenging his conviction by way of filing Criminal Appeal i.e. CRA-D-305-DB of 1999 which stands dismissed vide judgment dated 5.7.1999.

4. The case of the petitioner was considered by Chandigarh Administration for his premature release but was declined vide impugned order dated 2.7.2015 (Annexure P-8). The case of the petitioner was declined while noticing the following facts:

(i) that even while in custody, the petitioner was involved in jail breaking regarding which F.I.R no 17 of 22.01.04 under Sections 121, 121-A, 123, 223, 224 and 217 of IPC was lodged;

(ii) that the petitioner was caught with intoxicant powder while surrendering at the jail gate after the parole regarding which F.I.R No.147 of 06.10.2012 under Sections 22, 61, 85 of NDPS Act was lodged.

(iii) that the Inspector General of Prisons (U.T.) had sought report from District Magistrate, Patiala, who submitted report to the effect that petitioner was a habitual criminal and actively involved in terrorist activities during terrorism and if released he may, in association with his old friends indulge in terrorist activities again leading to hampering of peace in the State.

5. The petitioner challenged the aforesaid order by way of filing a Civil Writ Petition i.e. CWP No.1715 of 2015. However, during the pendency of the said writ petition, the case of the petitioner was again considered for his premature release but was again rejected vide order dated 14.09.2016 (Annexure P-10), while noticing that the petitioner was involved in jailbreak case i.e. FIR No. 17 dated 22.1.2004, the trial of which was still stated to be pending. Another factor that weighed for rejection of his case was that the Inspector General of Prisons, Union Territory, Chandigarh had not recommended his release in view of the report submitted by the District Magistrate, Patiala.

6. Consequently, the petitioner amended his writ petition so as to challenge the aforesaid subsequent order of rejection as well.

7. The learned counsel for the petitioner has submitted that the petitioner till date has undergone a sentence of more than 28 years which includes remissions to the tune of 7½ year and in any case has undergone an actual sentence of 20 years and as such he is fully covered by the policy pertaining to premature release of convicts. It has further been submitted that trials in respect of the other two cases in which the petitioner was booked i.e. the jailbreak case (FIR No.17 dated 22.01.2004) and the case pertaining to recovery of contraband (F.I.R No 147 dated 6.10.2012), already stands concluded wherein the petitioner has been acquitted and that there is no other trial pending against the accused.

8. On the other hand, the learned State counsel submitted that a convict cannot claim his premature release as of right and that it is a discretion to be exercised by the government keeping in view various factors including his past conduct and likelihood of any breach of peace consequent upon his release. It has been submitted that since the antecedents of the petitioner and the report of the District Magistrate suggest that his release would not be conducive for maintaining peace as he had remained involved in terrorist activities, therefore, it was deemed fit to reject his case for premature release. It has further been submitted that apart from the jailbreak case (FIR No. 17 dated 22.1.2004) and the case pertaining to recovery of contraband from possession of the petitioner while in jail (FIR No. 147 dated 6.10.2012), the petitioner has remained involved in the following cases as well:

(i) F.I.R No. 116 dated 08.06.1998 under Sections 379/511 IPC, P.S. Sadar Rajpura.

(ii) F.I.R No. 34 dated 10.04.1994 under Sections 302,323,34 IPC, P.S. Sadar Rajpura.

(iii) F.I.R No. 95 dated 28.06.1991 under Section 25-A TADA, P.S. Sadar Rajpura.

(iv) F.I.R No. 25 dated 10.03.1995 under Sections 452/325 IPC, P.S. City, Rajpura.

(v) F.I.R No.34 dated 22.01.1995 under Sections 380, 451, 452, 506, 148 and 149 IPC, P.S. City, Rajpura.

9. I have considered rival submissions addressed before this Court.

10. A life sentence means the actual life imprisonment for the entire life of the convict, as has been held by a Constitution Bench of Hon'ble the Supreme Court in Union of India Vs. Sriharan (2016) 7 SCC 1. The sentence of imprisonment for one's entire 'life' same may, however, be curtailed by the State Government by passing an order for his premature release. However, such like discretion has to be exercised on the advice of the State Level Committee. The State Level Committee has to arrive at its decision while considering all the material aspects based on sound principles. If the Court finds that the said discretion has not been properly exercised with due application of mind, the Court may set aside the order rejecting the application seeking grant of premature release and may remit the case back for reconsideration. However, the Court would not, on its own, undertake the exercise of considering whether or not to grant premature release to a convict. Hon'ble the Supreme Court, in 2009(2) SCC 268 State of Haryana vs. Bhup Singh, set aside the order of High Court where High Court had directed pre-mature release of a convict, while accepting the contention of the Appellant/ State that High Court can only direct the authority to consider the matter pertaining to pre-mature release but not suo moto order release of the convict.

11. The petitioner is undergoing sentence in respect of offences committed by him in U.T. Chandigarh. The Chandigarh Administration, vide gazette notification dated 2nd April, 1997 (Annexure P-4) had adopted Punjab Jail Manual, 1996 (Manual for Superintendence and Management of Jails in Punjab) for the purposes of considering premature release of prisoners. Section 431 of the Punjab Jail Manual deals with grant of premature release of the prisoners in terms of Article 161 of the Constitution of India vide which the Governor of a State is vested with powers to grant remissions of punishment or to commute his sentence. As per provisions of Section 431 of the Punjab Jail Manual-1996, a person undergoing life imprisonment for having been convicted for committing heinous crime, who has undergone 12 years of actual sentence and a total of 18 years of sentence including remissions would become entitled to be considered for his pre-mature release provided his case does not fall in the exceptions carved therein. Section 431 of the Punjab Jail Manual, 1996 reads as follows:

431. Procedure under Article 161 of the Constitution and Sections 432, 433 and 433-A of Cr. PC 1973. -

(1) (i) Minimum periods of imprisonment to be undergone for a convict before consideration of application for exercise of powers of the Government under Article 161 of the Constitution or sections 432, 433 and 433-A of Cr.P.C. 1973 are as under : -

A

B

C

D

E

For convicts

Convicts who

Convicts who

Other life convicts

Other life convicts

whose death

have been

have been

imprisoned for life

sentence has been

imprisoned for life

imprisoned for life

for offences for

commuted to life

for offences for

for offences for

which the death

imprisonment

which death is a

which death is a

penalty is not a

punishment and

penalty but crimes

punishment and

have committed

are not considered

have committed

heinous crime

heinous

heinous crime

A

B

C

D

E

Actual imprisonment

Imprisonment with remission

Actual imprisonment

Imprisonment with remission

Actual imprisonment

Imprisonment with remission

Actual imprisonment

Imprisonment with remission

Actual imprisonment

Imprisonment with remission

1

2

3

4

5

ADULTS :

14

20

12

18

10

14

10

14

8 ½

14

FEMALES / MINORS :

10

14

8

12

8

12

8

12

6

10

A. Heinous crimes with reference to column 'B' of I (i) above are defined as follows :

(i) Offence under Section 302 along with 347 of the IPC i.e. murder with wrongful confinement for extortion.

(ii) Section 302 with 375 i.e. murder with rape.

(iii) Offence of dacoity with murder.

(iv) Offence under Section 302 along with offences under the Terrorist and Disruptive Activities (Prevention) Act, 1987.

(v) Offence under Section 302 along with offence under the Untouchability (Offences) Act, 1955.

(vi) Offence under Section 302 where murder has been committed in connection with any dispute over dowry and this is indicated in the Judgment of the Trial Court.

(vii) Offence under Section 302 where the victim is a child under the age of 14 years.

(viii) Double murder and murder committed after conviction while inside the jail or on parole or on expiry of sentence shall be treated as heinous crime.

(ix) Any conviction under Section 120-B of the IPC.

Heinous crime with reference to column 'D' of the revised policy are defined as follows :

- (1) Offence under Section 304(b) of the IPC, i.e. a dowry death.
- (2) Offence under Section 304 along with Section 347 of the IPC i.e. culpable homicide with wrongful confinement for extortion.
- (3) Offence under Section 304 with Section 375 i.e. culpable homicide with rape.
- (4) Offence under Section 304 along with offence under the Terrorist and Disruptive Activities (Prevention) Act, 1987.
- (5) Offence under section 304 where culpable homicide has been committed in connection with any dispute on dowry and this is indicated in the judgment of the trial court.
- (6) Offence under Section 304 where the victim is a child under the age of 14 years.
- (7) Any conviction under Section 120-B of the IPC i.e. for criminal conspiracy in connection with the above crimes.

B. I. Adults are defined as persons above the age of 18 years.

II. The cases of premature release will only be considered provided the convict has maintained good conduct in jail. For this purpose good conduct means that he has not committed any jail offence for a period of 5 years prior to the date of his eligibility for consideration for release as per Para 1.1 above.

III. Cases for premature release will only be considered if the Government is satisfied that in the event of release of the convict there is no likelihood of the convict committing a crime or breach of peace in any way connected with the circumstances of the crime for which he was originally convicted.

IV. The Government reserves the right to exercise its powers under Article 161 of the Constitution in any way it deems fit.

2. Procedure to be followed :

(i) On becoming eligible for consideration for premature release under Article 161 of the Constitution as per Para-1 of the Policy the convict must submit a petition to the Governor indicating the grounds on which he desires his case to be considered for premature release.

(ii) The State Government shall refer the petition to the Inspector General of Prisons for preparing the case in the prescribed format for verification of details of imprisonment as well as for a report of good behaviour.

(iii) A copy of the petition shall simultaneously be forwarded to the District Magistrate for verification of the contentions made in the petition and a report regarding the likelihood of commission of breach of peace or crime by the convict



which is connected with the circumstances of the crime originally committed by him. For this purpose, inter alia, the following will be taken into account:

- (a) the behaviour of the convict during periods of parole.
- (b) the views of the local panchayat.

The actual verification and report regarding likelihood of commission of breach of peace or crime shall be made personally by the concerned station house officer and report shall be sent under his signatures to the District S.P. (SSP). Further the District S.P. (SSP) shall forward it under his own signatures to the District Magistrate who shall further send it to the Government under his own signatures. These duties shall not be delegated by the District Magistrate and the District S.P. (SSP) and the S.H.C.

(iv) On receipt of the report from the I.G. Prisons as well as the District Magistrate, the State Government will decide the petition in accordance with the policy laid down.

3. As regards the policy for dealing with premature release under Sections 432 and 433, this will be identical to the policy proposed for deciding cases under Article 161 of the Constitution, with the following difference :

The minimum period of actual imprisonment to be undergone before a case for premature release is considered will be as follows :

For convicts whose death sentence has been commuted to life imprisonment

Convicts who have been imprisoned for life for offences for which death is a punishment and have committed heinous crime

Convicts who have been imprisoned for life for offences for which death is a penalty but crimes are not considered heinous

Other life convicts imprisoned for life for offences for which the death penalty is not a punishment and have committed heinous crime

Other life convicts

A

B

C

D

E

Actual imprisonment

Imprisonment with remission

Actual imprisonment

Imprisonment with remission

Actual imprisonment

Imprisonment with remission

Actual imprisonment

Imprisonment with remission

Actual imprisonment

Imprisonment with remission

1

2

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ADULTS :

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FEMALES / MINORS :

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As regards procedure it would not be necessary for the convict to submit his petition on completion of the required number of years of actual imprisonment. The IG Prisons would send the case of the concerned convict to Government on or after the eligibility date which would then obtain the report of the District Magistrate and take appropriate decision.

As regards the prisoners convicted before 18.12.1978.

(a) Their cases will be considered in the light of the policy framed by the Govt, in 1971 (10.11.1971) and 1976 (30.1.1976) in respect of premature release cases.

(b) The cases of lifer prisoners convicted after 18.12.1978 will be governed by the policy adopted by the Govt. 12.12.1985.

12. A perusal of Section 431 of Punjab Jail Manual-1996 would show that the case of the petitioner would fall in the category of 'heinous' crime being an offence of murder along with dacoity. Ordinarily, such like convicts would be entitled to be considered for premature release upon their having undergone an actual sentence of 12 years and a total sentence of 18 years including remissions. However, it is not as of right that a convict, upon completion of such sentence, can claim his premature release. In this regard, Hon'ble the Supreme Court, in 2007(13) SCC 606 State of Haryana vs. Mahender Singh and others held as follows :-

"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."

13. The case for premature release of a convict is required to be considered under various parameters and the State Government may choose not to extend the benefit of premature release in case it is found that there is any likelihood of the convict committing a crime or breach of peace in any way connected with the circumstances of the crime for which he was originally convicted. It specifically provided in Section 431 of Punjab Jail Manual, 1996 that the Government reserves the right to exercise its powers under Article 161 of Constitution of India. In the present case, the case of the petitioner was not

recommended consequent upon the report of the Additional District Magistrate, Patiala (Annexure P-9) wherein on the basis of information sought through SSP, Patiala it has been reported that there are other cases pending against the petitioner and that neither the village panchayat nor any other responsible person of the village of the petitioner is willing to come forward to make a statement regarding premature release of Subeg Singh whereas upon discreet inquiries it had been revealed that nobody in the village wanted that Subeg Singh may be released prematurely because he had remained involved in terrorist activities and in case he is released some untoward incident may occur and peace in the State may be hampered.

14. To a similar effect was the report of the District Magistrate, Patiala, when the case of the petitioner was earlier declined vide order dated 2.7.2015 (Annexure P-8) wherein it has been observed that the petitioner is a habitual criminal and was actively involved in terrorist activities during the times of terrorism and that in case released, he may, in association with his old friends indulge again in terrorist activities which may lead to some untoward incident hampering peace in the State.

15. Although the learned counsel for the petitioner vehemently argued that in fact apart from the 2 cases in which he already stands acquitted, there is no other proceeding pending against him in respect of any other FIR and that in these circumstances the opinion of the district authorities regarding apprehension of breach of peace by the petitioner is without any basis and not justified, this Court is of the opinion that while the factum of acquittal in cases which had been pending against a convict is certainly required to be taken into account while considering his case for premature release but at the same time the opinion regarding the conduct and antecedents and likelihood of breach of peace upon release of the convict is not to be based solely on such acquittals. In a given case, an accused may get acquitted on account of some purely technical reasons or on account of slipshod investigation or the witnesses having been won over. The district authorities have to form an opinion regarding the conduct and antecedents by conducting enquiries which may even be in the nature of a discreet enquiry. The scope of such inquiry can include the following aspects:

1. Whether the offence is an individual act of crime without affecting the society at large?
2. Whether there is any fruitful purpose of confining of this convict anymore?
3. Whether there is any chance of future reoccurrence of committing crime?
4. Whether the convict has lost his potentiality in committing crime?
5. Socio-economic condition of the convict's family?

16. In the present case, since it has specifically been reported that nobody in the village of the petitioner came forward to vouch for his good behavior and were rather apprehensive about breach of peace, therefore, the decision of the State

government in rejecting the claim of the petitioner at this stage cannot be found fault with so as to warrant any interference. The petition, as such, is dismissed.

17. It is, however, clarified that this order is not to be treated as any kind of bar for consideration of the case of the petitioner in future in case at a later stage it is found that he fulfils all the conditions for premature release and his case does not fall in any exception and that his release is not likely to cause an interference in peace. It is further clarified that whenever the case of the petitioner is considered afresh the State shall seek specific information in respect of all the five other cases in which the petitioner is stated to be involved as have been mentioned in Annexure P-9 and para 8 of this judgment.