LAWYER
E NEWS

HIGH COURT OF PUNJAB AND HARYANA
Bench: Justice Deepak Gupta
Date of Decision: November 30, 2023

CRWP-5385-2022

Gurnam Singh

. . . . Petitioner

Vs.

State of Punjab and others . . . . Respondents

Legislation:

Section 161, 226 of the Constitution of India
Sections 302, 323, 34 of the Indian Penal Code (IPC)
Sections 25 & 27 of the Arms Act, 1959
Section 432, 433, and 433(A) of the Criminal Procedure Code (Cr.P.C.)
Section 3 of Punjab Good Conduct Prisoners (Temporary) Release Act, 1962

Subject : Consideration for premature release of a life convict based on the 1991 policy of the Government of Punjab and the interpretation of the actual sentence served including the exclusion of the parole period.

Headnotes :

Premature Release – Denial of Premature Release – Petitioner's plea for premature release rejected – Convicted under Sections 302, 323, 34 of IPC and Arms Act – Serving life imprisonment since 2001 – Contention based on Punjab Government policy dated 08.07.1991 regarding sentence remissions. [Paras 1-3]

Policy Interpretation – Punjab Government's 1991 policy for life convicts – Minimum actual imprisonment of 10 years and total of 14 years including remission for certain categories – Petitioner's claim of fulfilling these criteria for premature release. [Paras 7-9]

Actual Sentence Calculation – Discrepancy between petitioner's claim and state's submission on actual sentence served – State's formula excludes parole period from actual sentence – Reference to Supreme Court's decision in Avtar Singh Vs. State of Haryana regarding non-inclusion of parole in actual sentence calculation. [Paras 10-12, 14-15]

Legal Precedent – Reliance on Supreme Court's judgment in Avtar Singh case – Upholding legislative provision excluding parole period from actual sentence calculation – Impact on the petitioner's claim for premature release. [Paras 13-16]

Decision – Petition Dismissed – Petitioner not meeting the actual sentence requirement as per 1991 policy after excluding parole period – Petitioner ineligible for premature release. [Para 18]

Referred Cases:

- **State of Haryana vs. Mahinder Singh, 2007 (4) RCR 909**
- **State of Haryana and others Vs. Jagdish, 2010 (2) RCR (Criminal) 464**
- **Avtar Singh Vs. State of Haryana, Appeal (Crl.) 271 of 2002, decided on 19.02.2002**
- **State of Haryana Vs. Mohinder Singh & Others, (2003) 3 SCC 394**
- **Sunil Fulchand Shah Vs. Union of India and Others, 2000 (3) SCC 409**
- **Faqir Singh Vs. State of Punjab, Law Finder doc Id # 46978**
- **Ranbir Singh Vs. State of Punjab and others, CRWP-4485-2022 decided on 12.09.2023**

Representing Advocates
Mr. Rajpreet Brar, Advocate, for the petitioner.
Mr. Parneet Singh Pandher, AAG, Punjab.

****

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 226 of the Constitution of India is for setting aside the impugned order dated 11.05.2022 (Annexure P-3), whereby case of the petitioner for pre-mature release was rejected by Superintendent, Central Jail, Amritsar – respondent N: 3.

2. Petitioner is undergoing sentence in case FIR No.78 dated 19.05.2001 registered at Police Station Lopoke, District Amritsar, under Sections 302, 323, 34 of IPC and Sections 25 & 27 of the Arms Act, 1959, wherein he was convicted vide judgment dated 31.10.2003 and was sentenced to undergo imprisonment for life. Criminal Appeal No. CRA-D168-DB-2004 filed by the petitioner was dismissed by this court on 07.01.2008.

3. According to the petitioner, as per the policy dated 08.07.1991, issued by the Government of Punjab, a person is required to undergo 10 years actual sentence & 14 years of sentence by including remission period; whereas he has already undergone more than 11 years of actual sentence and by adding remission, this period has crossed 19 years and so, he is entitled to be considered for premature release. It is further contended that it is the policy applicable on the date of conviction, which is to govern the case of pre-mature release, as has been held by Hon'ble Supreme Court in the case of ***State of Haryana vs. Mahinder Singh*** *2007 (4) RCR 909*; and ***State of Haryana and***

others Vs. Jagdish, *2010 (2) RCR (Criminal) 464.* It is further submitted that the repeated requests made by the petitioner in this regard have not been considered. He also sent a Legal Notice dated 24.02.2022 (Annexure P-2) through his counsel to the Jail Authorities, but the respondent has not conveyed any information/order either to the counsel or to the petitioner, which led to filing of CRWP-3221 of 2022 before this Court, which was disposed of on 08.04.2022 with a direction to decide the pre-mature release case of the petitioner within a period of 6 weeks from that date. Ultimately, respondent No.3 vide the impugned order dated 11.05.2022 (Annexure P-3) rejected the case of the petitioner for premature release, by deducting the parole period in the actual sentence, which is not permissible under law. With these submissions, petitioner prays for his premature release.

4. (i) As per status report filed by way of affidavit dated 07.11.2023 filed by Shri Anurag Kumar Azad, Superintendent, Central Jail, Amritsar on behalf of respondent Nos.1 to 3, petitioner has undergone actual sentence of 08 years, 11 months and 08 days only, though as per the 1991 policy, the actual undergone sentence should be at least 10 years.

(ii) Respondents have submitted further that earlier the premature release cases of the lifers were sent according to the formula, which is “custody during undertrial period + conviction period + remissions parole”. The said matter was discussed in the State Level Committee under the Chairmanship of the Principal Secretary, Jails (Punjab), Chandigarh and as per the decision taken on 16.03.2020, the premature release of the convict person shall be sent only after applying the formula “custody during trial period + conviction period - parole = actual sentence.” Respondents have further referred to a decision of Hon’ble Supreme Court rendered in ***Appeal (Crl.) 271 of 2002*** titled as ***Avtar Singh Vs. State of Haryana and another***, decided on 19.02.2002, wherein it had been held by the Hon’ble Supreme Court that period of temporary

release of a prisoner on parole is to be counted towards the total period of detention, unless it is otherwise curtailed by legislative act, rules, instructions or terms of grant of parole. In the said case, it was held by the learned Apex Court as under: -

"The second contention of the learned counsel for the appellant has also to be rejected in view of the decision of this Court in Sunil Fulchand Shah (supra). 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.
We also do not find force in the contention of the learned counsel for the appellant that sub-section (3) of Section 3 of the Act is hit by Article 21 of the Constitution. By a valid legislative Act, the period of temporary release on parole has been denied while counting the actual sentence

undergone by the prisoner. It cannot be said that such right of a prisoner has been taken away without due process of law. Consequently, these contentions of the learned counsel for the appellant are rejected."

(iii) Respondents have further referred to Section 3 of Punjab GoodConduct Prisoners (Temporary) Release Act, 1962 to contend that State government can temporarily release a prisoner for specified period on fulfilling certain specified conditions but the period of release is not to be counted towards total period of the sentence of the prisoner. It is by keeping in view the abovesaid provisions that the committee constituted for consideration of premature release case of lifer, has given the interpretation to the term 'actual sentence'.

(iv) With above submissions and re-iterating that petitioner has yet notcompleted his requisite sentence as per 1991 policy, prayer is made for dismissal of the petition.

5. I have considered submissions of both the sides and have perusedthe record.

6. It is not in dispute that petitioner has been sentenced to undergo imprisonment for life vide judgment dated 31.10.2003 in case arising out of FIR No.78 dated 19.05.2001 registered at Police Station Lopoke, District

Amritsar, under Sections 302, 323, 34 of IPC and Sections 25 & 27 of the Arms Act, and that this judgment has attained final- ity.

7. The Government of Punjab, Department of Home Affairs andJustice framed a policy dated 08.07.1991 for grant of remissions of sentences of life imprisonment under Section 432, 433 and 433(A) of the Cr.P.C. and Article 161 of the Constitution of India. Copy of the said policy is Annexure P1. As per the said policy, the minimum period of

imprisonment to be undergone for a convict before consideration of his application for exercise of powers of the Government under Article 161 of the Constitution of India is as under: -

A	**B**	**C**	**D**	**E**
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 crimes	Other life convicts

Imprisonme	Actuali	Imprisonme	**Actuali**	**Imprisonme**	Actuali	Imprisonme	Actuali	Imprisonme	

	nt with remission	mprison ment	nt with remission	**mprison ment**	**nt with remission**	mprison ment	nt with remission	mprison ment	nt with remission	
	20	12	18	**10**	**14**	10	14	8½	14	
	14	8	12	8	12	8	12	6	10	

8. As the policy reveals, the heinous crime is defined as under: -

A. Heinous crime with reference to column 'B' of 1(1) above are defined as follows: -

I. Offence under Section 302 along with 347 of the I.P.G. i.e, murder with wrongful confinement for extortion.

II. Section 302 with 375, i.e., murder with rape

III. Offence under Section of IPC i.e., 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 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 judgement of the Trial Court.

VII. Offence under Section 302 where the victims is a child under age of 14 years.

VIII. Any conviction under Section 120-B of the LP.C.

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

i)Offence under Section 304 (b) of the IPC, i.e., a dowry death.

(ii) *Offence under Section 304 along with Section 347 of the IPC, ie.,culpable. homicide with Wrongful confinement for extortion.*

(iii) *Offence under Section 304 with Section 375, i.e., culpable homicide with rape.*

(iv) *Offence under Section 304 along with offence under the Terrorist and Disruptive Activities (Prevention Act, 1987).*

(v) *Offence under Section 304 where culpable homicide has been committed in connection with any dispute on dowry and this is indicated in the judgement of the trial court.*

(vi) *Offence under Section 304 where the victim is a child under the age of 14 years.*

(vii) *Any conviction under Section 120-B of the IPC i.e., for criminal conspiracy in connection with the above crimes."*

9. It is not disputed that case of the petitioner falls in category 'C'of the table i.e., 'convicts who have been imprisoned for life for offences for which death is a penalty but crimes are not considered heinous' and thus, in order to consider the case of the petitioner for premature release, he must have undergone actual imprisonment of 10 years and imprisonment with remission as 14 years.

10. The custody certificate attached with the affidavit dated 07.11.2023 of the respondents reveals that the custody period of the petitioner is as under: -

Sr. N:	**Particulars**	**Period**	**Year(s)**	**Month (s)**	**Day(s)**

1.	Period as undertrial:	19.05.2001 to 30.10.2003	02	05	11
2.	Conviction period	31.10.2003 to 01.05.2007 22.12.2017 to 04.11.2023	09	04	12
3.	Interim Bail Period, if any	Nil	00	00	00
4.	Parole availed	=	02	10	15
5.	Detail of overstay/ absent from parole/ furlough	(-)	00	00	00
6.	Actual custody period after conviction [S. No.2-4 &5]		06	05	27
7.	Actual undergone period including custody as Undertrial [S.No.1+6]		08	11	08
8.	Earned Remission GR (+)		08	00	00
9.	Total Sentence including remission		**16**	**11**	**08**

	[S.No.7+8]				

(Sixteen Years, Eleven Months and Eight Days only)

11. Thus, it is clear from the above said custody certificate thatthough the total period of sentence of the petitioner by including his custody period as undertrial and custody period after conviction is 11 years, 09 months and 23 days as on 07.11.2023, but after excluding the parole period, the actual custody period works out to be 08 years, 11 months and 08 days only. Thus, the case of the petitioner does not fall in the category 'C' of the 1991 policy (Annexure P-1). Petitioner has not completed the actual custody period of 10 years imprisonment, as his total custody period of 08 years, 11 months and 08 days only. Although, total sentence of the petitioner after including the remission period is 16 years, 11 months and 8 days, though it is required to be 14 years, still, the condition of undergoing actual sentence of minimum 10 years is not fulfilled in the case of the petitioner and so, his case for premature release as per 1991 policy (Annexure P-1) is not yet ripe.

12. In the aforesaid facts and circumstances, the question to be considered is that whether the parole period should be included in the actual sentence or not, as the same has been deducted by the Superintending of Police, Central Jail Amritsar - Respondent No.3 in the impugned order Annexure P3, in view of the Government Instructions contained in the order dated 16.03.2020.

13. Similar issue was considered by Hon'ble Supreme Court in the case of ***Avtar Singh (Supra).*** In that case, appellant Avtar Singh, a convict, was undergoing sentence of imprisonment. He moved an application before this High Court seeking direction to the State Government to include the period of parole availed by him in the total period of sentence undergone by him. The application was dismissed by this Court by holding that period of parole cannot be counted towards the actual sentence undergone by him. Feeling aggrieved, said Avtar Singh approached the Apex Court by filing Special Leave Petition and also challenged the vires of Sub Section 3 of Section 3 of the Haryana Good Conduct Prisoners (Temporary Release)Act, 1988 [for short 'the 1988 Act'] on the ground that Sub Section is arbitrary, illegal, ultra vires and un-constitutional.

14. Hon'ble Apex Court, observed that though in the case of ***State of Haryana Vs. Mohinder Singh & Others, (2003) 3 SCC 394;*** and Constitutional Bench in ***Sunil Fulchand Shah Vs. Union of India and Others, 2000 (3) SCC 409*** had held that parole and furlough period can also be counted as the period of sentence of the imprisonment, but in those decisions, the question of validity of the impugned Sub Section 3 of the 1988 Act had not been considered, so the matter was referred to the Larger Bench. The Larger Bench then made reference to Section 3 of the 1988 Act, providing for temporary release of prisoners on certain grounds; Section 4 of the 1988 Act providing for temporary release of prisoners on furlough and then held as under: -

"Thus, it is seen that under Sections 3 and 4 the legislature has made two categories of prisoners for temporary release; a prisoner released on parole under Section 3 is not entitled for counting the period of release towards the total period of sentence of imprisonment undergone by him; whereas, a prisoner released on furlough, period of such temporary release shall be counted towards his total period of imprisonment.

Two points have been urged by the learned counsel for the appellant.
Firstly, it is submitted that since the Constitution Bench of this Court in ***Sunil Fulchand Shah versus Union of India*** *and Ors. [2000 (3) SCC 409] has held that the period of parole can also be counted as a period of sentence of the imprisonment, sub-section (3) of Section 3 of the Act is unconstitutional and violative of Article 21 of the Constitution. Secondly, it has been contended that sub- section (3) of Section 3 of the Act is discriminatory inasmuch as a prisoner released temporarily under Section 3 shall not be entitled to count such period of release towards the total period of sentence, whereas temporary release of a prisoner under Section 4 such temporary period of release on furlough would be counted towards the total period of sentence.*

In ***Sunil Fulchand Shah (supra),*** *the Constitution Bench by a majority after considering various dictionary meaning of the word 'Parole' held that the action for grant of parole, generally speaking is an administrative action and in paragraph 27 of the judgment it was held that parole is a form of temporary release from custody, which does not suspend the sentence of the period of detention, but provides conditional release from the custody and changes the*

mode of undergoing the sentence. However, in paragraph 30 of the judgment the above position of parole was further clarified as follows:-

".....Since release on parole is a temporary arrangement by which a detenu is released for a temporary fixed period to meet certain situations, it does not interrupt the period of detention and, thus, needs to be counted towards the total period of detention unless the rules, instructions or terms of grant of parole, prescribe otherwise."(emphasis supplied)

In the same paragraph the Bench also held that

'.....the period of detention would not stand automatically extended by any period of parole granted to the detenu unless the order of parole or rules or instructions specifically indicates as a term and condition of parole, to the contrary' (emphasis ours)

Parole is essentially an executive function and now it has become an integral part of our justice delivery system as has been recognised by Courts. Though, the case of Sunil Fulchand Shah (supra) was a case of preventive detention, we are of the opinion that the same principle would also apply in the case of punitive detention.

Thus, the Constitution Bench by majority decision clearly held that the period of temporary release of a prisoner on parole is to be counted towards the total period of detention, unless it is otherwise provided by legislative act, rules, instructions or terms of the grant of parole."

15. Hon'ble Apex Court further held as under:

"The second contention of the learned counsel for the appellant has also to be rejected in view of the decision of this Court in ***Sunil Fulchand Shah*** *(supra). 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.***

We also do not find force in the contention of the learned counsel for the appellant that sub-section (3) of Section 3 of the Act is hit by Article 21 of the Constitution. By a valid legislative act the period of temporary release on

parole has been denied while counting the actual sentence undergone by the prisoner. It cannot be said that such right of a prisoner has been taken away without due process of law. Consequently, these contentions of the learned counsel for the appellant are rejected."

16. Thus, Hon'ble Supreme Court found that by a valid legislative Act, the period of temporary release on parole has been denied while counting the actual sentence undergone by the petitioner and that it could not be stated that such a right of the petitioner had been taken away without due process of law.

17. In view of the above said authoritative pronouncement by Hon'ble Supreme Court in the case of ***Avtar Singh (Supra),*** the contrary view taken by this Court in ***Faqir Singh Vs. State of Punjab, Law Finder doc Id # 46978***, which has been further relied upon in ***Ranbir Singh Vs. State of Punjab and others***, CRWP-4485-2022 decided on 12.09.2023, cannot give any advantage to the petitioner.

18. In view of the aforesaid discussion, this Court finds no merit in the present petition, as the petitioner has till date not completed actual sentence of 10 years as required under the 1991 Policy and as such, the petition is hereby dismissed.