



MALKIT SINGH AND OTHERS VS. STATE OF PUNJAB

Present: Mr. Rishabh Singla, AAG, Punjab.

1. A perusal of the office report dated 12.02.2019 indicates that on 09.02.2019, a Judge of the this Court paid a surprise visit to the Central Jail, Women Jail and Borstal Jail, Ludhiana. During the said visit, some of the inmates approached him and requested for disposal of their applications for premature release. Consequently, the matter was taken up on the judicial side in form of CWP No.4524 of 2019, which evolved into the present petition.

2. Learned State counsel seeks a short accommodation to have complete instructions.

3. A perusal of the record indicates that on 23.02.2023, the following order was passed:

“A perusal of status report dated 13.2.2023, shows that information pertaining to the pendency of premature release applications in respect of all the Districts has been furnished. However, the exact period for which such applications remain pending cannot be discerned.

The State to furnish information in respect of each case as regards the date when such case was initiated and the date when such case came to be finalized or as to whether the same is still pending. Such information may be tabulated jailwise or District wise, whichever is convenient. In case, any further clarification is required, it shall be open to State to move a fresh application in this regard on the next date of hearing.

List again on 13.03.2023.”

4. In compliance thereof, multiple status reports were filed, the latest being affidavit dated 10.12.2024 of Surinder Singh, Deputy Inspector General of Prisons, Punjab office of Additional Director General of Police (Prisons), Punjab, Chandigarh. According to the detailed information supplied

therein, a total of 412 different jails cases of pre-mature release of convicts lodged in different jails in the State of Punjab are pending consideration.

5. Having perused the record, this Court is of the opinion that the policy instituted by the State for premature release is equally applicable to all convicts and denial to be considered under the same directly impacts their fundamental rights as enshrined under Articles 14, 19 and 21 of the Constitution of India. Once eligible to be considered for premature release according to the applicable policy, the State cannot deny them this concession without recording due reasons for the same. In fact, the State is duty bound to act fairly and proceed according to the policy formulated by it in a manner that does not discriminate between similarly situated persons in absence of an intelligible differentia. Non-arbitrariness is a facet in Article 14 of the Constitution of India and the State and all its agencies are required to abide by it. The State cannot indulge in cherry picking and only provide the concession of premature release to a select few out of the pool of similarly situated convicts and such approach is highly inequities. Reference in this regard can be made to the judgments rendered by the Hon'ble Supreme Court in ***Raj Kumar vs. State of Uttar Pradesh 2024(9) SCC 598*** and ***State of Haryana and others vs. Jagdish 2010 AIR (Supreme Court) 1690***.

6. As a prelude to further discussion, it would be apposite to refer to ***Charles Sobraj vs. The Superintendent, Tihar Jail (1978) 4 SCC 104***, where dealing with violation of rights of prisoners, Justice Krishna Iyer astutely, observed as follows:

“When law ends tyranny begins; and history whispers, iron has never been the answer to the rights of man. Therefore we affirm that imprisonment does not spell farewell to fundamental rights although, by

a realistic re-appraisal, courts will refuse to recognise the full panoply of Part III enjoyed by a free citizen.”

7. According to affidavit dated 10.12.2024, 412 inmates had applied for pre-mature release till 10.12.2024. The rather conspicuous failure on part of the State agencies to process the applications of such a considerable number of inmates is a deeply concerning. In doing so, the applicants-inmates have been subjected to further incarceration when they may be eligible to be released. Such an undisciplined approach is symptomatic of the culture of apathy that has developed on the subject of rights and well being of convicts. In denying them their legal right to be considered under a policy duly devised by the State for a specific purpose, the authorities have essentially categorized them as second-class citizens. The administration cannot truly comprehend the value of liberty as perceived by a prisoner, who lives its absence every single day. These 412 inmates maybe entitled to be released, on the basis of a policy established by law that abides by the standards of *‘fair, just and reasonable’* as held mandatory by the Hon’ble Supreme Court in ***Maneka Gandhi vs. Union of India 1978 AIR SC 597***. However, in a most cavalier manner, their applications remain pending consideration. The incarcerated cannot be expected to live at the whims and fancies of the State and neither does their incarceration entitle the administration to jeopardize their fundamental rights. In fact, a Constitution Bench of the Hon’ble Supreme Court in ***Sunil Batra vs. Delhi Administration (1978) 4 SCC 494*** has categorically held that all prisoners shall be entitled to all the rights bestowed upon the citizens by the Constitution of India. Speaking through Justice Krishna Iyer, the following was observed:

“214. There are certain broad submissions common to both the petitions and they may first be dealt with before turning to specific

contentions in each petition. **It is no more open to debate that convicts are not wholly denuded of their fundamental rights. No iron curtain can be drawn between the prisoner and the Constitution. Prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed** (see *Procunier v. Martinez*, (1974) 40 L Ed 2d 224 at p. 248). However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. **His interest in the limited liberty left to him is then all the more substantial. Conviction for a crime does not reduce the person into a non person whose rights are subject to the whim of the prison administration and, therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards** (see *Charles Wolff v. McDonnell*, (1974) 41 L ed 2d 935 at p. 937). By the very fact of the incarceration prisoners are not in a position to enjoy the full panoply of fundamental rights because these very rights are subject to restrictions imposed by the nature of the regime to which they have been lawfully committed. In *D. Bhuyan Mohan Patnaik v. State of Andhra Pradesh* (1975) 2 SCR 24" one of us, Chandrachud J., observed:

"Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails by its own force the deprivation of fundamental freedoms like the rights to move freely throughout the territory of India or the right to "practise" a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment. **Likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.**" (emphasis added)

8. To quote the courageous and compassionate Nelson Mandela,

"To deny people their human rights is to challenge their very humanity."

The fundamental rights, which includes right to liberty and dignity, have been granted by the Constitution, and not the State for them to be withdrawn in this undignified fashion. These rights are inherent to all individuals by virtue of their humanity, putting them beyond the scope of arbitrary authority. The prisoners have already been punished for the crime

that resulted in their conviction. Treating their applications for grant of premature release as trivial and elective, appears to be a measure of further unjustified retribution which is expressly forbidden by Article 20(3) of the Constitution. Perhaps, in doing so, the administration is keeping those deserving of and entitled to a chance at reformation, reintegration and living a meaningful life. Such conduct reflects a medieval mindset, suggesting stagnation in evolution of thought. The approach adopted by the State plays a key role in furthering the cause of reformatory justice and it is duty-bound to proceed in a manner that does not cause or trigger erosion of fundamental rights and promote dehumanization. Reference in this regard can be made to the judgment rendered by the Hon'ble Supreme Court in ***State of Andhra Pradesh vs. Challa Ramakrishna Reddy (2000) 5 SCC 712***.

9. The theory of reformation and rehabilitation that emerged in the 18th century aims at separating the criminal from the crime and compels us to look beyond the one fateful act committed by him. In a civilised society like ours, it would be truly unfortunate if an offender is not given the opportunity to realise and fully fathom his mistake and channel that awareness into making fruitful contributions in society. The peno-correctional institutes must not only be looked at as a place where punishment is carried out, but also a place of rehabilitation. The criminal justice dispensation system must be guided by the idea of allowing the offender to rectify his wrong and reintegrate into the society as a law abiding member once the requisite sentence is served.

10. Recently, a two Judge bench of the Hon'ble Supreme Court in ***In Re: Policy Strategy For Grant Of Bail 2025(2) R.C.R.(Criminal) 52***, held that once the convict is entitled for release on the basis of the applicable policy, the State would be obliged to consider his case, even in absence of an

application by him in this respect. Speaking through Justice Abhay S. Oka, observed as follows:

“21) We, therefore, record the following conclusions:

a) Where there is a policy of the appropriate Government laying down guidelines for consideration of the grant of premature release under Section 432 of the CrPC or Section 473 of the BNSS, it is the obligation of the appropriate Government to consider cases of all convicts for grant of premature release as and when they become eligible for consideration in terms of the policy. In such a case, it is not necessary for the convict or his relatives to make a specific application for grant of permanent remission. When the jail manual or any other departmental instruction issued by the appropriate Government contains such policy guidelines, the aforesaid direction will apply;

b) We direct those States and Union Territories that do not have a policy dealing with the grant of remission in terms of Section 432 of the CrPC or Section 473 of the BNSS to formulate a policy within two months from today;

c) Appropriate Government has the power to incorporate suitable conditions in an order granting permanent remission. Consideration of various factors, which are mentioned in the paragraph 13 above by way of illustration, is necessary before finalizing the conditions. The conditions must aim at ensuring that the criminal tendencies, if any, of the convict remain in check and that the convict rehabilitates himself in the society. The conditions should not be so oppressive or stringent that the convict is not able to take advantage of the order granting permanent remission. The conditions cannot be vague and should be capable of being performed;

d) Order granting or refusing the relief of permanent remission must contain brief reasons. The order containing reasons should be immediately communicated to the convict through the office of the concerned prison. The copies thereof should be forwarded to the Secretaries of the concerned District Legal Services Authorities. It is the duty of the prison authorities to inform the convict that he has the right to challenge the order of rejection of the prayer for the grant of remission.

e) As held in the case of Mafabhai Motibhai Sagar⁴, an order granting permanent remission cannot be withdrawn or cancelled without giving an opportunity of being heard to the convict. An

order of cancellation of permanent remission must contain brief reasons;

f) The District Legal Services Authorities shall endeavour to implement NALSA SOP in its true letter and spirit.

*g) Further, the District Legal Services Authorities shall also monitor implementation of conclusion (a) as recorded above. **For this purpose, the District Legal Services Authorities shall maintain the relevant date of the convicts and as and when they become eligible to a consideration for grant of premature release, they shall do the needful in terms of conclusion (a).** The State Legal Services Authorities shall endeavour to create a portal on which the data as aforesaid can be uploaded on real time basis.” (emphasis added)*

Taking note of the delay in processing applications for premature release, a two judge Bench of the Hon’ble Supreme Court in ***Rashidul Jafar @ Chota vs. State of Uttar Pradesh and another (2024) 6 SCC 561***, has issued the following directions, speaking through Justice D.Y. Chandrachud:

“18. We direct that:

(i) All cases for premature release of convicts undergoing imprisonment for life in the present batch of cases shall be considered in terms of the policy dated 1 August 2018, as amended, subject to the observations which are contained herein. The restriction that a life convict is not eligible for premature release until attaining the age of sixty years, which was introduced by the policy of 28 July 2021, stands deleted by the amendment dated 27 May 2022. Hence, no case for premature release shall be rejected on that ground;

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

(iii) In terms of para 4 of the policy dated 1 August 2018, no application is required to be submitted by a convict undergoing life imprisonment for premature release. Further, through

amendment dated 28 July 2021, para 3(i), which included convicts undergoing life imprisonment who have not filed application for pre-mature release in the prohibited category, has specifically been deleted. Accordingly, all cases of convicts undergoing life sentence in the State of Uttar Pradesh who are eligible for being considered for premature release in terms of the policy, including but not confined to the five hundred and twelve prisoners involved in the present batch of cases, shall be considered in terms of the procedure for premature release stipulated in the policy;

(iv) The District Legal Services Authorities in the State of Uttar Pradesh shall take necessary steps in coordination with the jail authorities to ensure that all eligible cases of prisoners who would be entitled to premature release in terms of the applicable policies, as noticed above, would be duly considered and no prisoner, who is otherwise eligible for being considered, shall be excluded from consideration.

(v) These steps to be taken by DLSAs would, include but not be limited to, Secretaries of DLSAs seeking status report on all prisoners undergoing life imprisonment in the prisons falling under their jurisdiction in terms of the format of table prepared in Annexure-A covering the details mentioned in para 13 of this judgment and ensuring its submission by relevant authorities within eight weeks of this order as well as on an annual basis. Further, DLSAs would utilize this status report to monitor and engage with respective authorities to ensure the implementation of our directions to ensure premature release in terms of applicable policies in all eligible cases of convicts undergoing life sentence on a continuous basis;

(vi) The applications for premature release shall be considered expeditiously. *Those cases which have already been processed and in respect of which reports have been submitted shall be concluded and final decisions intimated to the convict no later than within a period of one month from the date of this order. **Cases of eligible life convicts who are (i) above the age of seventy years; or (ii) suffering from terminal ailments shall be taken up on priority and would be disposed of within a period of two months.** The Uttar Pradesh State Legal Services Authority shall, within a period of two weeks, lay down the priorities according to which all other pending cases shall be disposed of. All other cases shall, in any event, be disposed of within a period of four months from the date of this order; and*

(vii) *Where any convict undergoing life imprisonment has already been released on bail by the orders of this Court, the order granting interim bail shall continue to remain in operation until the disposal of the application for premature release.*” (emphasis added)

Further, this Court in ***Pohlu @ Polu Ram vs. State of Haryana and others 2025(1) R.C.R.(Criminal) 297*** had issued the following direction:

“18. In view of the fact that every day this Court comes across numerous petitions seeking premature release of the convicts/petitioners in terms of applicable policy whose cases have been rejected on the grounds mentioned above, the following directions are issued:-

(a) Secretaries, District Legal Services Authority across the States of Punjab and Haryana and the Union Territory of Chandigarh are directed to visit the jail premises falling under their jurisdiction periodically and identify such convicts undergoing life imprisonment, who are eligible for premature release in terms of applicable policy at the time of their conviction, but their cases were rejected on the grounds listed in paragraph No.17.

(b) Thereafter, family members of the convicts, who are eligible for premature release, will be called upon by the Secretaries, District Legal Services Authorities and would be informed about the directions issued by this Court and provide legal assistance in filing appropriate applications for expeditious disposal their cases for premature release.

(c) If the case of any convict is pending consideration with the competent authority for more than six months, he is required to be released on interim bail, in view of the direction issued by this Court in Pawan Kumar v. D.K. Tiwari and another, COCP No. 2020 of 2022 decided on 30.01.2023.” (emphasis added)

11. Regrettably, in spite of the specific directions issued by this Court in ***Pohlu @ Polu Ram (supra)*** as well as ***Pawan Kumar vs. D.K. Tiwari and another COCP No.2020 of 2022 decided on 30.01.2023***, the inmates awaiting consideration of their premature release application are not being released on interim bail. Shockingly, some applications are pending for almost two years. As such, this Court is left with no other option but to direct the concerned

Chief Judicial Magistrates to release such prisoners on interim bail within 02 weeks of receipt of a certified copy of this order.

12. Registry is directed to circulate a copy of this order as well as a copy of the list of all 412 inmates, available as Annexure R-1 to affidavit dated 10.12.2024, to all the Chief Judicial Magistrates in whose jurisdiction they fall.

13. Further, the State of Haryana and the Union Territory of Chandigarh are directed to furnish an affidavit containing the details pertaining to pending cases of premature release from the last two years i.e. 2023-2024 and 2024-25,withing 08 weeks, in the following manner:

DETAILS REGARD PENDING PREMATURE RELEASE CASES

Pertaining to District:_____ for the year:_____

Month	Number of applications for premature release pending	Number of fresh applications	Number of fresh applications disposed of	Balance
January				
February				
March				
April				
May				
June				
July				
August				
September				
October				
November				

December				
Total				
Monthly Average				
Remarks, if any				

14. Mr. Vikas Bharadwaj, AAG, Haryana and Mr. Manish Bansal, Public Prosecutor, Chandigarh are present in Court today and on asking of this Court, accept notice. Registry is directed to provide them with a copy of this order, within one week.

15. To be listed on 06.08.2025

21.05.2025
manisha

(HARPREET SINGH BRAR)
JUDGE