2023:PHHC:127233

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRWP-3794-2023
Reserved on: 05.09.2023
Pronounced on: 29.09.2023

Ravdeep Kaur . . . . Petitioner

Vs.

State of Punjab & Ors. . . . . Respondents

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CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

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Present: - Mr. Kanwaljit Singh Ahluwalia, Sr. Advocate, with
Mr. Ajaivir Singh, Advocate, for the Petitioner.

Mr. P.S. Pandher, AAG, Punjab.

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DEEPAK GUPTA, J.

By way of this Criminal Writ Petition filed under Article 226/227 of the Constitution of India, petitioner prays for issuance of direction to the respondents to grant her premature release under Article 161 of the Constitution of India as per policy of the State, as petitioner has already completed the requisite period of sentence for grant of premature release, having served more than 16.5 years of actual custody (*now more than 17 years*).

2. Admittedly, petitioner and one Manjeet Singh were convicted under Section 302 read with Section 120B IPC in a case arising out of FIR No. 321 dated 14.10.2005, registered at Police Station Civil Lines, Patiala, vide judgment dated 28.03.2012 by the Court of ld. Additional Sessions Judge, Chandigarh. Vide separate order dated 30.03.2012 (Annexure P1), petitioner as well as co-convict were sentenced to '***undergo imprisonment for life, which would extend to their full life'*** and to pay fine of ₹ 50,000/-

each with default sentence for committing the said offence under Section 302 read with Section 120B IPC. Criminal Appeal No. CRA-525-DB-2012 against the aforesaid conviction and sentence is pending before a Division Bench of this Court for adjudication.

CONTENTIONS OF THE PETITIONER :

3. (i) Contention of ld. counsel is that petitioner has already undergone more than double the requisite actual custody period for premature release under Article 161 of the Constitution of India, as per the policies for premature release framed by the State of Punjab.

(ii) Ld. Counsel contends that Government is competent to frame policy for exercising the constitutional power under Article 72/161 of the Constitution of India for premature release, as has been held by Hon'ble Apex Court in ***Maru Ram Vs. Union of India*, *AIR 1980 SC 2147***; and that keeping in view the said judgment, the State of Punjab issued a policy dated 08.07.1991 (Annexure P2). As per this policy, petitioner being a female was required to undergo 8 years actual imprisonment and 12 years imprisonment including remission for the purpose of premature release. Subsequently, another policy was issued on 08.08.2011 (Annexure P3), as per which also, petitioner being a female was required to undergo 8 years actual imprisonment and 12 years imprisonment including remission. Ld. counsel contends that case of the petitioner falls under Column 'C' of the Schedule given in paragraph 3 of the said policy dated 08.08.2011. Said policy has been modified on 04.04.2013 and then again amended on 14.12.2017 and in both of them, the actual sentence required to be undergone by the petitioner being a female is 8 years actual imprisonment and 12 years total sentence including remission. Despite the said clear cut

policy framed by the Punjab Government for grant of premature release, the State Government has failed to act upon the same. Petitioner made representation (Annexure P6) to various authorities, but her case has not been considered on the ground that she is a life convict.

(iii) Ld. counsel contends further that case of the petitioner for premature release is required to be considered in the light of the policy (Annexure P3) and the subsequent policies (Annexure P4 & P5). Ld. counsel has referred to ***State of Haryana Vs. Jagdish, 2010(3) JT 341,*** to contend that in case a liberal policy prevails on the date of consideration of the case of the lifer for premature relief, he/she should be given benefit of relief thereof.

(iv) It is contended further that even if the order of ld. Sessions Court is taken into consideration to keep the convict behind bars for rest of the life, there is no bar for constitutional authority to exercise power under Article 161 of the Constitution of India as held by Hon'ble Supreme Court in ***State of UP Vs. Sanjay Kumar, 2012 (8) SCC 537.***

(v) Ld. counsel has further referred to ***Union of India Vs. V. Sriharan @ Murugan and others, 2016 (7) SCC 192*** so as to contend that Constitutional Bench of Hon'ble Supreme Court has categorically ruled that *'sentence of life imprisonment for remainder of the natural life'* cannot be awarded by the trial Court and that such a sentence can be awarded either by the High Court or by the Supreme Court, as an alternative of the death penalty and that too in exceptional cases. Ld. counsel contends that in view of this authoritative pronouncement of Hon'ble Supreme Court, the trial Court lacked jurisdiction to award sentence of life imprisonment to be extended up to remainder of the natural life of the petitioner and said view

has been re-affirmed by Hon'ble Supreme Court in ***Narender Singh @ Mukesh @ Bhura Vs. The State of Rajasthan***, **2022 LiveLaw (SC) 247.**

(vi) Ld. counsel has also referred to ***Savitri Vs. State of Haryana and others, 2020 (3) RCR (Crl) 182*** to contend that a Division Bench of this Court has held that trial Courts while awarding the sentence of life imprisonment, are in error in adding the rider that it would be for the remainder of the natural life and without remission, in view of the law laid down by the Hon'ble Supreme Court in ***Union of India Vs. V. Sriharan @ Murugan (supra)***.

(vii) Still further, by referring to ***Neki Nalwa Vs. State of Punjab and others***, ***2017(5) RCR (Crl) 261,*** Ld. counsel contends that premature release case cannot be declined by the State authorities on account of pendency of regular appeal before the Court.

(viii) It is also disclosed that petitioner had earlier filed CRWP-1885-2020 for same relief, but the same was dismissed as withdrawn vide order dated 07.09.2021 (Annexure P9) with liberty to file a fresh petition on the same cause of action after rectifying certain incorrect facts and by including certain new developments.

With all the aforesaid submissions, prayer is made for issuing directions to the respondents to grant premature release to the petitioner.

CONTENTIONS OF THE RESPONDENTS :

4. (i) In the latest reply dated 22.9.2023 filed by way of affidavit of Sh. Manjeet Singh Sidhu, Superintendent, Central Jail, Patiala on behalf of the respondent, it is submitted that as per the premature release policy of the Government of Punjab, there is no provision for such prisoners to grant the benefit of premature release, where the Court has awarded punishment till

death or imprisonment till natural life and therefore, premature release case of the petitioner cannot be initiated by the office of Superintendent Central Jail, Patiala. Representation of the petitioner was also forwarded to Additional Director General of Police (Jails), Punjab (Respondent No. 2) but as per reply received, petitioner was to be kept in jail for her full life.

(ii) Still further, it is contended that petitioner was earlier released for emergency parole on 06.12.2014 for a period of two weeks by the office of Superintendent Jail, Patiala. She was required to surrender on 21.12.2014, but petitioner did not surrender within the permitted time and was declared absconder, as a result of which FIR No.123 dated 22.12.2014 under Sections 8 & 9 of the Punjab Good Prisoners (Temporary Release) Act, 1962 and Section 467, 468 and 471 IPC was registered against her at Police Station, Lahori Gate, Patiala. She was later arrested and after trial in that case, she was convicted on 23.02.2022 by Ld. JMIC, Patiala and sentenced to rigorous imprisonment for 3 years & fine with default sentence under Section 468 IPC besides other offences.

(iii) Apart from the above, ld. State Counsel also contends that due to pendency of appeal filed by the petitioner against her conviction and sentence, which is to be considered by Hon'ble Division Bench of this court, present petition is not maintainable.

With this stand and controverting other averments of the petitioner, prayer is made by the respondents for dismissal of the petition.

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

ANALYSIS AND FINDINGS :

6. It is undisputed fact that vide order dated 30.03.2012 (Annexure P1), petitioner was sentenced to '***undergo imprisonment for life, which would extend to her full life'*** after recording her conviction under Section 302 read with Section 120-B IPC in case FIR No.321 dated 14.10.2005 registered at Police Station Civil Lines, Patiala by judgment dated 28.03.2012 passed by the then learned Additional Sessions Judge, Chandigarh. It is also not in dispute that against the said judgment of conviction and order of sentence, Criminal Appeal No. CRA-525-DB of 2012, is pending before a Division Bench of this Court.

Maintainability before Single/Division Bench

7. As this Court had a doubt as to whether this petition is to be considered by Single Bench or the Division Bench, a note dated 11.09.2023 was sent by this Court to the Registry for clarification, relevant portion of which is as under: -

> *"Considering the fact that Criminal Appeal against the conviction and sentence of the petitioner is pending before a Division Bench of this Court; and also considering the fact that earlier CRWP-1885-2020, for the same relief, was dismissed as withdrawn on 07.09.2021 (Annexure P9) by Division Bench of this Court, Registry is directed to inform about any rules/directions etc. to clarify as to whether this petition is to be considered by Single Bench or it is to be considered by the Division Bench of this Court."*

8. Pursuant to the aforesaid note, the Registry informed this Court that as per the current roster, no Division Bench has been deputed for hearing the pre-mature release cases and that after issuance of directions given by Hon'ble Division Bench in CRWP-1020-2022, the Registry is listing the pre-mature release cases before the Single Benches, being the

policy matter of the Government, irrespective of the fact that appeal/revision is pending before the Hon'ble Division Bench or Hon'ble Single Bench.

9. In view of the aforesaid report of Registry, present petition is being considered by this Court.

Whether pendency of appeal against conviction is a bar to consider case for premature release

10. One of the contentions raised by ld. State counsel is that as appeal against conviction and sentence filed by the petitioner is pending before the Division Bench of this Court, therefore, this petition is not maintainable and that any decision to be taken by this Court may run contrary to the view, which may be taken by the Hon'ble Division Bench while disposing of the appeal.

11. Similar question was considered by a Division Bench of this Court in ***Neki Nalwa's (supra)***. In that case, the pre-mature release case of the petitioner, who had been convicted and sentenced to life imprisonment, was not being recommended, due to pendency of the appeal before Division Bench, on account of instructions dated 16.04.2013 issued by Hon'ble Governor of Punjab to the effect that cases of life convicts for grant of pre-mature release are not to be put up or recommended, where the appeal filed by said convict is pending either in the Hon'ble Supreme Court of India or in the High Court.

12. Rejecting the contention of the State for not recommending the case for the aforesaid reason, it was held by Division Bench of this Court as under: -

> *"Having heard learned counsel for the parties and on going through the petition as well as the reply filed thereto, this Court finds that the*

case of the petitioner is not being recommended for consideration of her case for premature release on the ground that her conviction has not attained finality as the appeal filed by her is pending before this Court. Merely because the appeal filed by the petitioner is still pending for disposal is apparently not enough for the authorities concerned not to initiate and consider her case for grant of premature release. In ***Harjit Singh @ Hare Ram vs. State of Punjab and Others 2015(1) R.C.R. (Criminal) 370****, a Division Bench of this Court after relying upon the judgment of the Hon'ble Supreme Court in* ***Narayan Dutt and Others vs. State of Punjab and another 2011 (2) R.C.R. (Criminal) 140****, has held that the case of a convict for being released prematurely could not be withheld merely for the reason that the appeal preferred by him/her was pending before the Appellate Court. On the other hand, if the case of the convict falls squarely under the instructions issued by the Governor of Punjab for premature release, the Government has to consider the same despite the pendency of the appeal before the Court.*

In view of the above, order dated 06.05.2016 passed by the Superintendent, District Jail, Rupnagar declining initiation of the case of the petitioner for premature release on account of pendency of the appeal is set aside and the authorities concerned are directed to consider her case for premature release as per the policy applicable notwithstanding the pendency of appeal before this Court. Final decision in this regard be taken within three months from the date of receipt of certified copy of this order."

13. In view of the legal position as above, it is held that case of the petitioner for pre-mature release cannot be withheld, simply for the reason of pendency of the appeal before the Division Bench of this court.

State policies for premature release

14. The Government of Punjab, from time to time, has framed policies for grant of remission of sentences for life convicts, while exercising its power under Section 432, 433 and 433A of the Code of Criminal Procedure read with Article 161 of the Constitution of India.

Earliest such policy, as produced on record, was issued by the Government of Punjab, Department of Home Affairs and Justice vide letter dated 08.07.1991 (Annexure P2), which was later on followed by another policy issued vide notification dated 08.08.2011 (Annexure P3); and then followed by policy dated 04.04.2013 (Annexure P4) and policy dated 14.12.2017 (Annexure P5).

15. Recently, in ***Misc. Appl. No.2169 OF 2022 in WP (Criminal) No.36 OF 2022 titled "Rajkumar Vs. The State of Uttar Pradesh" decided on 6th February, 2023***, it has been held by Hon'ble Supreme Court that:

> *"In several decisions of this Court, it has been held that the case of a convict for premature release is governed by the applicable policy on the date of conviction* ***[State of Haryana Vs Jagdish (2010) 4 SCC 216] and [State of Haryana Vs Raj Kumar (2021) 9 SCC 292]"***

It is, thus, clear that it is the policy applicable at the time of recording conviction of a person, which is applicable to consider the case of pre-mature release/ remission.

16. In the present case, since the conviction of the petitioner was recorded on 28.03.2012 and sentence was pronounced on 30.03.2012 vide Annexure P.1, therefore, it is the policy issued vide notification dated 08.08.2011 (Annexure P.3), which should be applicable in this case, in case contentions of Ld. Counsel for petitioner are believed as it is. The said policy, known as ***Punjab Pre-mature Release of Life Convicts Policy, 2011*** provides a Schedule specifying the period of imprisonment, which is required to be undergone by a convict for being considered for pre-mature release. The relevant portion of the Schedule is as under: -

SCHEDULE (Period in Years)										
	A		B		C		D		E	
	For convicts whose death sentence has been commuted to life imprisonment		For Convicts who have been imprisoned for offences for which death is one of the punishments and have committed heinous crime.		**"For Convicts who have been imprisoned for life for offences for which death is one of the punishments but crimes are not considered heinous."**		Other life convicts imprisoned for life for offences for which the death is not one of the punishments and have committed heinous crime.		Other life convicts	
	Actual imprisonment	Imprisonment with remissions	Actual imprisonment	Imprisonment with remissions	Actual imprisonment	Imprisonment with remissions	Actual imprisonment	Imprisonment with remissions	Actual imprisonment	Imprisonment with remissions
Adults	14	20	12	18	10	14	10	14	8 1/2	14
Female/ minor	10	14	8	12	**8**	**12**	8	12	6	10
Prisoners of eighty years or above age	7	10	6	9	5	8	6	9	5	8

"(2) *Heinous Crimes referred to in column `B' of the said schedule are as follows:*

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

(ii) Section 302 IPC with 376 IPC i.e., murder with rape;

(iii) Offence under Section 396 of IPC i.e., dacoity with murder;

(iv) Offence under Section 302 IPC alongwith offence under the Terrorist and the Disruptive Activities (Prevention Act, 1987);

(v) Offence under Section 302 IPC alongwith offence under the Scheduled Castes and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 or Unlawful Activities (Prevention) Act, 1967;

(vi) *Offence under Section 302 IPC 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 IPC where the victim is a child under the age of 14 years; and*

(viii) *Any conviction under Section 120-B of the IPC in connection with any of the said offences.*

(3) *Heinous Crimes referred in column "D" of the said schedule are as follows:*

(i) *Offence under Section 304(B) of the IPC i.e., dowry death;*

(ii) *Offence under Section 304 IPC alongwith Section 347 of the IPC i.e., culpable homicide not amounting to murder with wrongful confinement for extortion;*

(iii) *Offence under Section 304 IPC alongwith Section 376 of the IPC i.e., culpable homicide not amounting to murder with rape;*

(iv) *Offence under Section 304 IPC alongwith offence under the Terrorist and Disruptive Activities (Prevention) Act, 1987 or Unlawful Activities (Prevention) Act, 1967;*

(v) *Offence under Section 304 IPC culpable homicide not amounting to murder has been committed in connection with any dispute on dowry and this is indicated in the judgment of the trial Court;*

(vi) *Offence under Section 304 IPC where the victim is a child under the age of 14 year; and*

(vii) *Any conviction under Section 120-B of the IPC in connected with any of the said offences.*

(4) *Notwithstanding anything contained in sub-clause (1) the Government shall be competent to exercise its power in respect of pre-mature release of a convict in any deserving case, as it may deem appropriate.*

4. (1) Subject to the provisions of clause 6 of this policy, before submitting an application for pre-mature release under Section 432 and 433 of the Criminal Procedure Code, 1973 (Central Act 2 of 1974), a convict shall have to undergo actual imprisonment for a period."

17. In present case, though petitioner has been convicted for offence under Section 302 read with Section 120-B IPC, but said conviction under Section 302/120-B IPC is not in connection with any of the offences specified in 2(ii) to 2(vii) as above and as such, it is found that case of the petitioner will fall under Column 'C' of the Schedule i.e., for convicts, who have been imprisoned for life for offences for which death is one of the punishments but crimes are not considered heinous.

18. As the Schedule reveals, a female convict is required to undergo actual imprisonment for a period of 08 years and total imprisonment with remissions of 12 years, before her case is considered for pre-mature release.

19. In the present case, the latest custody certificate (Annexure R1) annexed with the reply dated 22.09.2023 of the respondents would reveal the details of the custody period of the petitioner as under: -

(v) **Details of custody period in this case: -**

S. No.	Particulars	Period	Year	Month	Day
1.	Custody as Under Trial	28.10.05 to 29.03.12	06	05	01
2.	Custody after conviction	30.03.12 to 21.09.23	11	05	21
3.	Bail Period, if any	NIL	00	00	00
4.	Parole Period	(-)	00	06	16
5.	Detail of overstay/ absent	(-)	00	01	16

	from parole, furlough				
6.	Actual custody period after conviction S. No.2- (4&5)	(=)	10	09	19
7.	**Actual undergone period** (S. No.1+6)	(=)	**17**	**02**	**20**
8.	Earned Remission + GR	(+)	05	04	10
9.	**Total sentence including remission** (S. No.7+8)	(=)	**22**	**07**	**00**

20. It is, thus, clear from the aforesaid details of the custody period that petitioner has already undergone actual custody period of more than 17 years and 2 months and total sentence including the remission of 22 years and 7 months, which is much more than minimum prescribed period of 8 years of actual custody and 12 years of total imprisonment with remission.

Whether sentence of life imprisonment 'till natural death', is a bar to the applicability of the policy

21. Coming to the main objection of the respondents, the case of the petitioner is not being considered for premature release on the ground that her case does not fall within the parameters of the policy for the reason that her sentence is life imprisonment *till her natural death*.

22. In this regard, the contention of ld. counsel for the petitioner is that such a sentence could not have been imposed by the Court of Sessions, as it is in clear violation of the judgment of the Constitutional Bench of Hon'ble Supreme Court in ***V. Sriharan @ Murugan and others (supra).*** Ld. counsel also contends that even if the appeal against conviction is pending before the Division Bench of this Court as an Appellate Court, this Court is not debarred from considering the fact that sentence imposed by

the Sessions Court is per se illegal. For that, reliance has been placed upon the case of ***Savitri (supra).***

23. In the case of ***V. Sriharan @ Murugan and others (supra)***, a Constitutional Bench of Hon'ble Supreme Court, after taking note of the distinctive features in the two enactments i.e., Indian Penal Code and the Code of Criminal Procedure, observed as under: -

> *"101. Once we steer clear of such distinctive features in the two enactments, one substantive and the other procedural, one will have no hurdle or difficulty in working out the different provisions in the two different enactments without doing any violence to one or the other. Having thus noted the above aspects on the punishment prescription in the Penal Code and the procedural prescription in the Code of Criminal Procedure, we can authoritatively state that the power derived by the Courts of law in the various specified provisions providing for imposition of capital punishments in the Penal Code such power can be appropriately exercised by the adjudicating Courts in the matter of ultimate imposition of punishments in such a way to ensure that the other procedural provisions contained in the Code of Criminal Procedure relating to grant of remission, commutation, suspension etc. on the prescribed authority, not speaking of similar powers under Articles 72 and 162 of the Constitution which are untouchable, cannot be held to be or can in any manner overlap the power already exercised by the Courts of justice.*
>
> *102. In fact, while saying so we must also point out that such exercise of power in the imposition of death penalty or life imprisonment by the Sessions Judge will get the scrutiny by the Division Bench of the High Court mandatorily when the penalty is death and invariably even in respect of life imprisonment gets scrutinized by the Division Bench by virtue of the appeal remedy provided in the Code of Criminal Procedure. Therefore, our conclusion as stated above can be reinforced by stating that the punishment part of such specified offences are always examined at least once after the Sessions Court's verdict by the High Court and that too by a Division Bench consisting of two Hon'ble Judges.*

103. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial Court and confirmed by the Division Bench of the High Court, the concerned convict will get an opportunity to get such verdict tested by filing further appeal by way of Special Leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed.

104. We, therefore, reiterate that, the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other Court in this country. ***To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court****."*

24. In the case of ***Savitri (supra)*** before Division Bench of this Court, petitioner's application for temporary release/parole had been rejected by Divisional Commissioner, Hisar on the ground that trial court i.e., Court of Additional Sessions Judge, Hisar, had awarded the petitioner sentence of imprisonment for life i.e., whole of her natural life, without any remission, consequent to her conviction for the offences under Sections 302, 343 and 120-B of the IPC. This Court considered as to whether the trial Court could have passed such a sentence; and whether the authorities

would be precluded from considering any such application for release on parole till the appeal is decided. This Court held as under: -

> *9. The question whether the trial Court could have passed such a sentence would undoubtedly be one of the questions that would arise for consideration in the Petitioner's criminal appeal against her conviction and sentence which is pending before this Court. However, it is unlikely that the said appeal, which would have to be heard with the connected appeals of her co-convicts, can be taken up for hearing in the near future. Further, this would mean that till such question is decided, the authorities would be precluded from considering any of her applications for release on parole. It would be unreasonable, in the circumstances, for the examination of this question to be postponed to the hearing of the appeal, particularly since, as will be seen hereafter, the legal position in this regard is clear.*

25. This Court after referring to paragraphs 103 to 105 of ***V. Sriharan @ Murugan and others (supra)***, held as under:

> *"Thus, after the judgment of the Constitution Bench of the Supreme Court in* ***V. Sriharan*** *(supra), it is not open to a court inferior to the High Court and Supreme Court, while awarding a sentence of life imprisonment under the Indian Penal Code to further provide for any specific term of incarceration, or till the end of a convict's life, or to direct that there shall be no remission, as an alternate to the death penalty. That power is available only with the High Courts and the Supreme Court. Consequently, the trial Court, in the instant case, while awarding the Petitioner the sentence of rigorous imprisonment for life could not have added the riders that it should be for the rest of her natural life or that she would not be entitled to any remission."*

26. This Court then concluded that in terms of the law explained by the Constitution Bench of the Hon'ble Supreme Court in the case of ***V. Sriharan @ Murugan and others (supra)***, the Trial Court in its order dated 16.10.2018, awarding the sentence to the petitioner of rigorous imprisonment of life was in error in adding the rider that it would be for the

remainder of her natural life and without any remission. The Court also set aside the order of the Divisional Commissioner, rejecting the petitioner's application for parole on the aforesaid ground. Not only this, in the concluding paragraph, direction was given to circulate copy of the judgment and also that of the case of ***V. Sriharan @ Murugan and others (supra)*** to all the judicial officers as well as Jail authorities in the States of Punjab, Haryana and Union Territory of Chandigarh. The concluding paragraph is as under: -

> *"The Court is informed that notwithstanding the clear legal position explained in V. Sriharan (supra), the trial Courts have been adding riders to orders on sentence passed by them similar to what the trial Court did in this case. Accordingly, the Court directs that a soft copy of this judgment together with the judgment of the Constitution Bench of the Supreme Court in V. Sriharan (supra) be circulated by the Chandigarh Judicial Academy through email to all the judicial officers as well as the Jail authorities in the States of Punjab and Haryana and the Union Territory of Chandigarh."*

27. In view of the above said legal position enunciated by the Constitutional Bench of Hon'ble Supreme Court in ***V. Sriharan @ Murugan and others (supra)*** and further by Division Bench of this Court in the case of ***Savitri (supra),*** there remains no doubt that order of the trial Court (Annexure P1) in sentencing the petitioner to undergo imprisonment for life, with a rider to extend to full life, is clearly in violation of the decision of Hon'ble Supreme Court in the case of ***V. Sriharan @ Murugan and others (supra).*** Such a sentence can be passed either by this Court or by Hon'ble Supreme Court only.

28. In view of the aforesaid legal position, it is also held that the State authorities are not debarred from considering the case of the petitioner

for premature release in the light of its policy dated 08.08.2011 (Annexure P3).

Likely impact of this order on the pending appeal against conviction **:**

29. Now, the question arises that if the Division Bench of this Court as Appellate Court, at the time of disposal of the appeal of the petitioner, finds that sentence of the petitioner to life imprisonment till natural life is appropriate in the facts and circumstances of the case, but in the meantime, petitioner is released prematurely, then what will be the effect thereof. Conversely, if the petitioner is not released on account of pendency of the appeal and the Appellate Court ultimately imposes a sentence of undergoing life imprisonment but without any rider, then obviously the petitioner will have to undergo more such period in custody till the disposal of the appeal, despite the fact that petitioner has already undergone more than double the sentence as required under 2011 policy.

30. In order to make a balance, this Court considers it appropriate to hold that order passed in this petition shall be subject to the final outcome of the Petitioner's appeal. Meaning thereby, in case petitioner is released prematurely and on disposal of the appeal, the Appellate Court finds that petitioner was required to undergo imprisonment for life till her natural life, then the petitioner will have to surrender before the concerned authorities or as may be directed by the concerned Appellate Court.

Effect of the jail offence committed during custody period

31. Proceeding further, one of the reasons for not considering the case of the petitioner for premature release, as per the respondents, is that she had been earlier released for emergency parole on 06.12.2014 for a period of two weeks by the office of Superintendent Jail, Patiala. She was

required to surrender on 21.12.2014, but she did not surrender within the permitted time and was declared absconder, as a result of which FIR No.123 dated 22.12.2014 under Sections 8 & 9 of the Punjab Good Prisoners (Temporary Release) Act, 1962 and Section 467, 468 and 471 IPC was registered against her at Police Station, Lahori Gate, Patiala. She was later arrested and after trial in that case, she was convicted on 23.02.2022 by Ld. JMIC, Patiala and sentenced to rigorous imprisonment for 3 years & fine with default sentence under Section 468 IPC besides for other offences.

32. The Jail offence in question as pointed by the respondent was committed way-back in December 2014, though her conviction in that case was recorded in February 2022 as referred in the custody certificate.

33. By way of the judgment of ld. JMIC, Patiala, petitioner was directed to undergo rigorous imprisonment for a period of three years apart from fine. What is the effect of that sentence? In this regard, first of all it may be noted that sentence of the petitioner was suspended by the Appellate Court of Addl. Sessions Judge, Patiala vide order dated 31.03.2022 passed in CRA-94-2022 titled *Ravdeep Kaur Vs. State of Punjab*, copy of which has been placed on record by the ld. Counsel for the petitioner.

34. Apart from that, as the petitioner was already undergoing imprisonment for life, therefore, what is the effect of her later sentence for a period of three years is to be considered in the light of Sections 426 and 427 CrPC, which read as under: -

> *"**426. Sentence on escaped convict when to take effect**. -(1) When a sentence of death, imprisonment for life or fine is passed under this*

Code on an escaped convict, such sentence shall, subject to the provisions hereinbefore contained, take effect immediately.

(2) When a sentence of imprisonment for a term is passed under this Code on an escaped convict, -

(a) if such sentence is severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately;

(b) if such sentence is not severer in kind than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

(3) For the purposes of sub-section (2), a sentence of rigorous imprisonment shall be deemed to be severer in kind than a sentence of simple imprisonment.

427. Sentence on offender already sentenced for another offence. *-(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:*

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

35. In the context of abovesaid provisions, similar question was considered by the Hon'ble Supreme Court in ***State of Andhra Pradesh and another Vs. Vijayanagaram Chinna Reddappa – SLP (Crl.) No.2820 of 2023 decided on 28.04.2023.*** In that case, petition for issuance of a writ of

Habeas Corpus was filed to direct the Superintendent of Central Prison, Kadapa to set at liberty a convict, who had been prosecuted for offence under Section 302 IPC and was convicted and sentence to life imprisonment vide judgment dated 19.12.2006. Detenue escaped from custody during incarceration but was apprehended later on. On account of his escape and also for subsequent conviction in another case, he was convicted and sentenced to simple imprisonment for one year. High Court of Andhra Pradesh issued the writ of Habeas Corpus directing the Superintendent of Central Prison, Kadapa to set the convict at liberty, which order was challenged before the Hon'ble Supreme Court. After referring to Sections 426 and 427 of the CrPC, Hon'ble Supreme Court held as under:

> *"At the outset, we must remember that we are dealing with the case of an escaped convict. Therefore, the case of the detenu would obviously be covered by Section 426(2)(b), which deals with case of an escaped convict, already serving a sentence severer in kind, but imposed with a less severe sentence in respect of a subsequent conviction. Section 426(2)(b) Cr.P.C. states that insofar as an escaped convict is concerned, the sentence imposed in the second or subsequent conviction shall take effect only after the escaped convict has suffered imprisonment for a further period equal to that which at the time of escape remained unexpired of his former sentence.*
>
> *But insofar as a life convict is concerned, in law, no part of the sentence remains unexpired. The remission granted by the Government to a life convict, cannot be taken to mean that there is some portion of the life sentence that remains unexpired in the same sense as in the case of other convicts. A life sentence is a sentence for life. What remains unexpired of such a sentence is known only to God (if you believe) and to the Government, if there is a policy of remission. Therefore, Section 426(2)(b) cannot be taken to have included within its fold, the case of a life convict, since in the case of life convict no portion of the sentence remains unexpired, in the technical sense.*

If Section 426(2)(b) Cr.P.C. is out of the picture, then what remains is Section 427(2) Cr.P.C. Under Section 427(2) Cr.P.C., the subsequent sentence should run concurrently along with a previous sentence, if a person already undergoing a sentence of imprisonment for life, is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life.

Therefore, while Section 426 covers the case of an escaped convict, clause (b) of sub-section (2) thereof creates a conundrum in respect of life convicts. But Section 427, though does not deal with the case of an escaped convict, provides enough room for finding out how a sentence imposed on a subsequent conviction, in respect of a life convict, should be handled.

Therefore, the application of Section 427(2) Cr.P.C. by the High Court to the case on hand, is perfectly in order and the appeal deserves to be dismissed."

36. Applying the above said legal proposition in the instant case, since the Petitioner is already undergoing life imprisonment, therefore, even if she has been convicted and sentenced subsequently, the subsequent sentence is to run concurrently with the earlier sentence of life imprisonment.

37. Apart from the above, Paragraph 7 of the Notification dated 08.08.2011 (Annexure P3) i.e., Punjab Premature Release of Life Convicts Policy, 2011, specifies the procedure for considering the premature release cases. The relevant part of Paragraph 7 is as under: -

"7(2) The petition shall be referred by the Government within 15 days to the Inspector General of Prisons and by Inspector General of Prisons to superintendent Jail within 15 days for preparing the case in the prescribed format for verification of details of imprisonment as well as for a report of good behavior. On receipt of such petition from any source, the Superintendent of Jail concerned shall within 15 days submit premature release case of life convict alongwith his recommendation and record of remissions/parole etc. duly signed and authenticated to the Inspector General of Prisons ***keeping in view the convicts conduct during the last 5***

years. *Overall conduct may be categorized as good if the convict has not been punished for any jail offence during the last five years and has not received any adverse report during last parole."*

38. Thus, as per the aforesaid policy, conduct of the convict during the last five years is to be taken into account. The overall conduct is to be considered good, in case convict has not been punished for any jail offence during the last five years, before recommending the case for remission/parole etc.

39. In the present case, the jail offence was committed in February 2014 as noticed earlier i.e., more than 9 years ago. She has already been convicted and punished for that offence. Appeal against conviction is pending. Sentence has already been suspended by the Court of Addl. Sessions Judge, Patiala. In such circumstances, the conviction and jail offence in question cannot be the reason to withhold the case of the petitioner for premature release.

40. In ***Subhash Vs. State of Haryana***, ***1994 (3) RCR (Criminal) 489***, a life convict committed 19 jail offences for which a punishment was awarded to him. It was held by this Court that commission of jail offences is no legal ground to deny the premature release which became due especially when convict had already been punished for jail offences. Similar view was taken by this Court in ***Brahma Nand Vs. State of Haryana and others,*** *2015(3) RCR (Criminal) 836* and in ***Raj Kumar Vs. State of Punjab*** *(CRM-55534-M-2006), decided on 12.12.2006.*

41. In the case of ***Brahma Nand (Supra)***, this Court has held as under: -

"8 The issue as to whether jail offence is a ground to deny premature release to a life convict is no longer res-integra. This Court has

considered precisely such issue in Raj Kumar v. State of Punjab (Criminal Misc. No. 55534-M of 2006), decided on 12.12.2006 and held as follows:

> *"The counsel for the petitioner has relied on a judgment of this Court in the case of* ***Subhash v. State of Haryana, 1994 (3) Recent CR 489*** *to urge that commission of jail offences would be no legal or valid ground to deny the concession of premature release if it has become due, specially so when the convict had already been punished for the jail offences. While so holding, this Court in Subhash's case (supra) has relied on the case of* ***Lila Singh v. State of Punjab, 1988(1) RCR 28****. It was held that jail offences committed by the convict for which he has already been punished, cannot be taken into consideration while deciding the case for premature release. Admittedly, the case of the petitioner for consideration on his premature release has been declined on the ground that the same can be considered only if the convict has maintained a good conduct in jail. As per the reply, good conduct means that the person has not committed any jail offence for a period of five years prior to the date of his eligibility for consideration of release. It is accordingly pleaded that the benefit of premature release cannot be granted to the petitioner as his case is not covered by the instructions, as aforementioned. The stand of the State cannot be appreciated being contrary to the law laid down by this Court. The case of the petitioner is fully covered by the judgment of this Court, referred to above. It has been clearly held by this Court that commission of a jail offence is no legal ground to deny the premature release, especially when the person has been punished for such a misconduct. Accordingly, the action of the respondents in not considering the case of the petitioner for premature release cannot be sustained. The petitioner is entitled to a consideration of his case for premature release in terms of the instructions, Annexure P1."*

42. In the case of ***Kamal Kant Tiwari Vs. State of Punjab and others, 2014(2) RCR (Criminal) 940*****,** it was held by this Court that jail offence committed by life convict is not to be taken into consideration while deciding his case for grant of premature release as the convict will have to face consequences for jail offence separately.

43. Having regard to the aforesaid legal position, it is held that premature release of the petitioner cannot be withheld for the jail offence committed by the petitioner in 2014 for which she has been convicted and sentenced.

CONCLUSION :

44. Consequent to the entire discussion of the factual matrix and legal position as above and taking into account the fact that petitioner has already undergone more than double the actual sentence as well as the total sentence as minimum required under the 2011 policy, the present petition is hereby allowed. The respondent- authorities are hereby directed to consider the premature release case of the petitioner in light of its policy dated 08.08.2011 (Annexure P3) and the observations made in this order. It is further directed that till the decision is taken by the competent authority regarding premature release of the petitioner as per this order, she be released on interim bail on furnishing requisite bonds to the satisfaction of the ld. CJM concerned.

45. Despite repetition, it is clarified that this order is subject to the final outcome of the Petitioner's appeal i.e., CRA-525-DB of 2012. In case, on disposal of the appeal, the Appellate Court finds that petitioner was required to undergo imprisonment for life till her natural life, then the petitioner will have to surrender before the concerned authorities or as may be directed by the concerned Appellate Court.

Disposed of accordingly.

(DEEPAK GUPTA)
JUDGE

29.09.2023
Vivek

1. Whether speaking/reasoned? ***Yes***
2. Whether reportable? ***Yes***