IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRWP No. 8232 of 2022 (O&M)
Date of decision: 05.02.2024

Pohlu @Polu Ram ...Petitioner

Versus

State of Haryana and others ...Respondent

2. CRWP No.5189 of 2023 (O&M)

Rahul @ Rajiv ....Petitioner

Versus

State of Haryana and others ...Respondent

3. CRWP No.8889 of 2023 (O&M)

Azad ...Petitioner

Versus

State of Haryana and others ...Respondent

4. CRWP No.4607 of 2023 (O&M)

Rajat ...Petitioner

Versus

State of Haryana and others ...Respondent

5. CRWP No.711 of 2024 (O&M)

Pahlu ...Petitioner

Versus

State of Haryana and others ...Respondent

6. CRWP No.7000 of 2022 (O&M)

Balwant alias Vicky ...Petitioner

Versus

State of Haryana and others ...Respondent

7. CRWP No.428 of 2024 (O&M)

Rajender ...Petitioner

Versus

State of Haryana and others ...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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Present: - Mr. Aditya Yadav, Advocate
for the petitioner in CRWP No.8232 of 2022.

Mr. Varinder Singh Rana, Advocate
for the petitioner(s) in CRWP Nos.5189, 4607, 711 of 2023 and 428 of 2024.

Mr. Rahul Deswal, Advocate
for the petitioner(s) in CRWP Nos.7000 of 2022 and 8889 of 2023.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Akshay Jindal, Advocate
Amicus Curiae.

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HARPREET SINGH BRAR, J. (ORAL)

1. This common order shall dispose of all the above mentioned petitions as the issues for determination are similar in all cases.

2. The present petitions are filed under Article 226/227 of the Constitution of India read with Section 482 of the Criminal Procedure Code, 1973 (hereinafter referred to as 'Cr.P.C') praying for issuance of writ in the nature of mandamus directing the respondents to reconsider and decide the petitioners' case for premature release.

FACTUAL BACKGROUND

3**.** **CRWP -8232- 2022 (Pohlu @Polu Ram):** The petitioner was convicted vide judgment dated 27.07.2007 in FIR No. 328 dated 20.09.1995 registered under Sections 302, 120-B, 148, 149 of the IPC and Section 25 of the Arms Act, 1959 at Police Station City Kaithal and sentenced to undergo life imprisonment under Section 302/148 IPC. The petitioner has undergone

actual sentence of 12 years, 10 months and 4 days and total sentence (including remission) of 16 years, 8 months and 18 days. The case of the petitioner is covered by Premature Release Policy dated 12.04.2002 which requires 14 years of actual imprisonment and 20 years of total imprisonment with remission for a case to be considered for pre-mature release. However, his request was denied by the jail authorities vide impugned order dated 14.10.2021 stating that the petitioner is a threat to the public safety and has not completed requisite sentence to be considered for pre-mature release.

CRWP- 5189-2023 (Rahul @ Rajiv): The petitioner was convicted vide judgment dated 30.09.2010 in FIR No. 129 dated 15.02.2006 registered under Sections 302, 34, 120-B, 201, 202 of the IPC at Police Station City Gurgaon and sentenced to undergo life imprisonment. The petitioner has undergone actual sentence of 16 years, 9 months and 4 days and total sentence (including remission) of 20 years 11 months and 26 days. The case of the petitioner is covered by Premature Release Policy dated 13.08.2008 which requires 14 years of actual imprisonment and 20 years of total imprisonment with remission for a case to be considered for pre-mature release. However, his request was deferred for two years from 30.09.2022 by the jail authorities vide impugned order dated 31.03.2023 stating that the petitioner was involved in eleven other criminal offences and has also committed jail offences. It was concluded that he is a hardened criminal with no potential of reformation.

CRWP- 8889-2023 (Azad): The petitioner was convicted vide judgment dated 30.09.2010 in FIR No. 129 dated 15.02.2006 registered under Sections 302, 34, 120-B, 201, 202 of the IPC at Police Station City Gurugram and sentenced to undergo life imprisonment. The petitioner has undergone actual sentence of 16 years, 5 months and 14 days and total sentence (including remission) of 21

years 01 month and 5 days. The case of the petitioner is covered by Premature Release Policy dated 13.08.2008 which requires 16 years of actual imprisonment and 20 years of total imprisonment with remission for a case to be considered for pre-mature release. However, his request was denied by the jail authorities vide impugned order dated 07.08.2023 stating that the petitioner was involved in five other criminal offences and has committed a heinous crime.

CRWP- 4607-2023 (Rajat): The petitioner was convicted vide judgment dated 13.07.2009 in FIR No. 52 dated 15.01.2006 registered under Sections 302, 34, 120-B of the IPC and Section 25 of Arms Act, 1959 at Police Station City Gurugaon and sentenced to undergo life imprisonment. The petitioner has undergone actual sentence of 15 years, 8 months and 10 days and total sentence (including remission) of 21 years 01 month and 29 days. The case of the petitioner is covered by Premature Release Policy dated 13.08.2008 which requires 14 years of actual imprisonment and 20 years of total imprisonment with remission for a case to be considered for pre-mature release. However, his request was deferred for two years from 30.09.2022 by the jail authorities vide impugned order dated 31.03.2023 stating that the petitioner is a hardened criminal with no potential for reformation.

CRWP-711-2024 (Pahlu): The petitioner was convicted vide judgment dated 27.04.1999 in FIR No. 124 dated 13.04.1991 registered under Sections 302, 326, 325, 148, 149 of the IPC at Police Station Nuh, Gurugram and sentenced to undergo life imprisonment. The petitioner has undergone actual sentence of 13 years, 5 months and 10 days and total sentence (including remission) of 17 years, 08 months and 08 days, as on 30.09.2023. The case of the petitioner is covered by Premature Release Policy dated 04.02.1993 which requires 14

years total imprisonment with remission for a case to be considered for pre-mature release. However, his request was deferred for one years from 30.09.2023 by the jail authorities vide impugned order dated 11.12.2023 stating that the petitioner had absconded from parole for 11 years 3 months 1 day.

CRWP- 7000-2022(Balwant alias Vicky):. The petitioner was convicted vide judgment dated 28.07.2009 in FIR No. 331 dated 09.11.2006 registered under Sections 302, 120-B, 148, 149 of the IPC and Section 25 of Arms Act, 1959 at Police Station Sector 5, Gurugram and sentenced to undergo life imprisonment. The petitioner has undergone actual sentence of 14 years, 11 months and 13 days and total sentence (including remission) of 20 years, 08 months and 14 days. The case of the petitioner is covered by Premature Release Policy dated 13.08.2008 which requires 20 years of actual imprisonment and 25 years of total imprisonment with remission for a case to be considered for pre-mature release. However, his request was denied by the jail authorities vide impugned order dated 04.03.2022 stating that the petitioner has not completed requisite sentence to be considered for pre-mature release.

CRWP- 428-2024 (Rajender): The petitioner was convicted vide judgment dated 27.04.1999 in FIR No. 63 dated 14.04.2006 registered under Sections 302, 307 of the IPC and Section 25 of Arms Act, 1959 at Police Station Bawani Khera, Bhiwani and sentenced to undergo life imprisonment. The petitioner has undergone actual sentence of 17 years, 5 months and 13 days and total sentence (including remission) of 20 years and 2 days. The case of the petitioner is covered by Premature Release Policy dated 12.04.2002 which requires 14 years of actual imprisonment and 20 years of total imprisonment

with remission for a case to be considered for pre-mature release. However, his request was deferred for two years from 30.09.2023 by the jail authorities vide impugned order dated 11.12.2023 stating that the petitioner has committed double murder of his own mother and father, which is a grave and serious offence.

CONTENTIONS

4. **CRWP -8232- 2022 (Pohlu @Polu Ram)**

Learned counsel for the petitioner contends that the case of the petitioner is covered by Premature Release Policy dated 12.04.2002 which requires 14 years of actual imprisonment and 20 years of total imprisonment including remission for premature release but according to para 2(b) of the policy, adult life convicts undergoing life sentence for crimes not considered heinous are eligible for premature release after completion of 10 years of actual sentence and 14 years of total sentence including remission. The petitioner has undergone actual sentence of 13 years, 8 months and 1 day and total sentence of 15 years, 7 months and 17 days as on 25.07.2022 and is eligible for premature release according to the said policy. The petitioner has displayed good behaviour while on parole/leave/furlough and has been issued recommendation letters dated 05.12.2020 by the Gram Panchayat, Rasida as well as by Pardhan, Sarpanch Association, Tehsil Narwana. He has also received an appreciation letter dated 13.12.2020 by Sri Guru Ravidass Sabha (Regd.), Panchkula. Without considering everything available on record, the impugned order unfairly regarded the petitioner being a threat to the society. The petitioner is entitled to be released according to the relevant policy and depriving him of the same would be violative of his rights under Articles 14, 19 and 21 of the Constitution of India.

He further submits that every convict is entitled to have same access to law and he is required to be treated equally both in procedure and substance of the law. Similarly situated convicts have been granted the concession of premature release, therefore, since the petitioner satisfies the mandate of applicable policy, the State cannot indulge in favouritism and deny the same relief to the petitioner.

CRWP- 5189-2023(Rahul @ Rajiv)

Learned counsel for the petitioner contends that the petitioner has maintained good conduct in jail and has been acquitted in 7 of the cases lodged against him. The case of the petitioner was deferred by two years on the ground that the petitioner is a hardened criminal and beyond reformation, without citing reasons for such conclusion. According to the Premature Release Policy dated 13.08.2008, 14 years of actual imprisonment and 20 years of total imprisonment including remission is required for premature release. The petitioner has undergone total sentence of about 21 years and therefore, he is eligible for premature release. The petitioner is entitled to be released according to the relevant policy and depriving him of the same would be violative of his rights under Articles 14, 19 and 21 of the Constitution of India.

CRWP- 8889-2023(Azad)

Learned counsel for the petitioner contends that the petitioner has maintained good conduct in jail and has been acquitted in 3 out of the 5 cases lodged against him. The case of the petitioner was deferred by two years on the ground that the petitioner is a hardened criminal and beyond reformation, without citing reasons for such conclusion. According to the Premature Release Policy dated 13.08.2008, 14 years of actual imprisonment and 20

years of total imprisonment including remission is required for premature release. The petitioner has undergone actual sentence of over 16 years 5 months and total sentence of about 21 year and therefore, he is eligible for premature release. However, he was denied premature release citing his involvement in 5 other cases and the heinous nature of the crime he has been sentenced for. The petitioner is entitled to be released according to the relevant policy and depriving him of the same would be violative of his rights under Articles 14, 19 and 21 of the Constitution of India.

CRWP- 4607-2023 (Rajat)

Learned counsel for the petitioner contends that the petitioner has maintained good conduct in jail and has been acquitted or discharged in all of the 11 cases lodged against him. The case of the petitioner was deferred by two years on the ground that the petitioner is a hardened criminal and beyond reformation, without citing reasons for such conclusion. According to the Premature Release Policy dated 13.08.2008, 14 years of actual imprisonment and 20 years of total imprisonment including remission is required for premature release. The petitioner has has undergone about 16 years of actual sentence and 21 years of total sentence and therefore, he is eligible for premature release. The petitioner is entitled to be released according to the relevant policy and depriving him of the same would be violative of his rights under Articles 14, 19 and 21 of the Constitution of India.

CRWP-711-2024(Pahlu)

Learned counsel for the petitioner contends that the petitioner has maintained good conduct in jail. During the period of parole overstayed by the petitioner, he was involved in FIR No. 271 dated 01.05.2003 under Sections 8/9 of the HGCP Act registered at PS City Gurugram in which he has already

served the sentence awarded to him. The case of the petitioner was deferred by two years on the ground that the petitioner absconded from parole, however, since 2015 the petitioner has availed parole multiple times and never misused the concession. According to the Premature Release Policy dated 04.02.1993, 14 years of total imprisonment including remission of at least 6 years is required for premature release and the petitioner has undergone 17 years 8 months and 8 days of total sentence with remission, as on 30.09.2023. The case of the petitioner was deferred for one year vide impugned order dated 11.12.2023 on the ground of absconding from parole. Previously, in 2021 as well the State Level Committee had denied premature release to the petitioner vide order dated 22.03.2021 for the same reason. The petitioner is entitled to be released according to the relevant policy and depriving him of the same would be violative of his rights under Articles 14, 19 and 21 of the Constitution of India.

CRWP- 7000-2022(Balwant alias Vicky)

Learned counsel for the petitioner submits that the petitioner has maintained good conduct in jail and he has never outstayed the duration of the paroles and two furloughs he had availed till date. According to the Premature Release Policy dated 13.08.2008, 20 years of actual imprisonment and 25 years of total imprisonment including remission is required for premature release and the petitioner has undergone 14 years of actual imprisonment and 20 years of total imprisonment and as such, is eligible for the concession. The case of the petitioner was dismissed on the ground that he is a hardened criminal and would be a danger to public order and safety. The petitioner is entitled to be released according to the relevant policy and depriving him of

the same would be violative of his rights under Articles 14, 19 and 21 of the Constitution of India.

CRWP- 428-2024 (Rajender)

Learned counsel for the petitioner contends that the case of the petitioner is covered by Premature Release Policy dated 12.04.2002 which requires 20 years of total imprisonment including remission for premature release and the petitioner has undergone a total sentence of 20 years as on 25.07.2022 and is eligible for premature release according to the said policy. The case of the petitioner was deferred to two years vide impugned order on the ground that the petitioner had committed a grave and serious offence i.e a double murder of his own parents. The petitioner is entitled to be released according to the relevant policy and depriving him of the same would be violative of his rights under Articles 14, 19 and 21 of the Constitution of India.

5. Per contra learned State counsel submits that the petitioners have been convicted for grave and serious offences and have not been granted the concession of premature release as there are serious concerns about them for disturbing the public peace and harmony. However, she cannot controvert with certitude that no similarly situated convict has been released under the applicable policy for premature release.

6. Mr. Akshay Kumar Jindal, Advocate, who was appointed as *amicus curiae*, submits that the State must abide by the terms of policy, which was in force on the date of conviction and it is not open to the State to adopt an arbitrary yardstick by picking up cases for premature release of similarly situated convicts and deny the same relief to the petitioners.

OBSERVATIONS AND ANALYSIS

7. Having heard the learned counsel for the parties and the *amicus curiae* and perused the record with their able assistance, this Court is of the opinion that the policy instituted by the State for premature release is equally applicable to all convicts and 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. The State is duty bound to act fairly and to 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.

8. A two Judge Bench of the Hon'ble Supreme Court in ***Joseph Vs. The State of Kerala and others*** in Writ Petition (Criminal) No.520 of 2022 decided on 21.09.2023, 2023 SCC OnLine SC 1211, speaking through Justice S. Ravindra Bhat has held as under:-

> *"28. To issue a policy directive, or guidelines, over and above the Act and Rules framed (where the latter forms part and parcel of the former), and 14 undermine what they encapsulate, cannot be countenanced. Blanket exclusion of certain offences, from the scope of grant of remission, especially by way of an executive policy, is not only arbitrary, but turns the ideals of reformation that run through our criminal justice system, on its head. Numerous judgments of this court, have elaborated on the penological goal of reformation and rehabilitation, being*

the cornerstone of our criminal justice system, rather than retribution. The impact of applying such an executive instruction/guideline to guide the executive's discretion would be that routinely, any progress made by a long-term convict would be rendered naught, leaving them feeling hopeless, and condemned to an indefinite period of incarceration. While the sentencing courts may, in light of this court's majority judgment in Sriharan (supra), now impose term sentences (in excess of 14 or 20 years) for crimes that are specially heinous, but not reaching the level of 'rarest of rare' (warranting the death penalty), the state government cannot – especially by way of executive instruction, take on such a role, for crimes as it deems fit.

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37.Classifying - to use a better word, typecasting convicts, through guidelines which are inflexible, based on their crime committed in the distant past can result in the real danger of overlooking the reformative potential of each individual convict. Grouping types of convicts, based on the offences they were found to have committed, as a starting point, may be justified. However, the prison laws in India - read with Articles 72 and 161 - encapsulate a strong underlying reformative purpose. The practical impact of a guideline, which bars consideration of a premature release request by a convict who has served over 20 or 25 years, based entirely on the nature of crime committed in the distant past, would be to crush the life force out of such individual, altogether. Thus, for instance, a 19 or 20 year old individual convicted for a crime, which finds place in the list which bars premature release, altogether, would mean that such person would never see freedom, and would die within the prison walls. There is a peculiarity of continuing to imprison one who committed a crime years earlier who might well have changed totally since that time. This is the condition of many people serving very long sentences. They may have killed someone (or done something much less serious, such as commit a narcotic drug related offences or be serving a life sentence for other non-violent crimes) as young individuals and remain incarcerated 20 or more years later. Regardless of the morality of continued punishment, one may question its rationality. The question is, what is achieved by continuing to punish a person who recognises the wrongness of what they have done, who no longer identifies with it, and who bears little resemblance to the person they were years

earlier? It is tempting to say that they are no longer the same person. Yet, the insistence of guidelines, obdurately, to not look beyond the red lines drawn by it and continue in denial to consider the real impact of prison good behavior, and other relevant factors (to ensure that such individual has been rid of the likelihood of causing harm to society) results in violation of Article 14 of the Constitution. Excluding the relief of premature release to prisoners who have served extremely long periods of incarceration, not only crushes their spirit, and instils despair, but signifies society's resolve to be harsh and unforgiving. The idea of rewarding, a prisoner for good conduct is entirely negated.

38. In the petitioner's case, the 1958 Rules are clear - a life sentence, is deemed to be 20 years of incarceration. After this, the prisoner is entitled to premature release. The guidelines issued by the NHRC pointed out to us by the counsel for the petitioner, are also relevant to consider - that of mandating release, after serving 25 years as sentence (even in heinous crimes). At this juncture, redirecting the petitioner who has already undergone over 26 years of incarceration (and over 35 years of punishment with remission), before us to undergo, yet again, consideration before the Advisory Board, and thereafter, the state government for premature release - would be a cruel outcome, like being granted only a salve to fight a raging fire, in the name of procedure. The grand vision of the rule of law and the idea of fairness is then swept away, at the altar of procedure - which this court has repeatedly held to be a "handmaiden of justice".

A Full Bench of the Hon'ble Supreme Court in **Rajkumar Vs. The State of Uttar Pradesh AIR 2023 SC 265**, speaking through Chief Justice Dhananjaya Y. Chandrachud, has held as under:

"13. The State having formulated Rules and a Standing Policy for deciding cases of premature release, it is bound by its own formulations of law. Since there are legal provisions which hold the field, it is not open to the State to adopt an arbitrary yardstick for picking up cases for premature release. It must strictly abide by the terms of its policies bearing in mind the fundamental principle of law that each case for premature release has to be decided on the basis of the legal position as it stands on the date of the conviction subject to a more beneficial regime being provided in terms of a subsequent policy determination.

> *The provisions of the law must be applied equally to all persons. Moreover, those provisions have to be applied efficiently and transparently so as to obviate the grievance that the policy is being applied unevenly to similarly circumstanced persons. An arbitrary method adopted by the State is liable to grave abuse and is liable to lead to a situation where persons lacking resources, education and awareness suffer the most.*

9. It appears that certain petitioners were denied premature release on the ground that they were likely to be a threat to the society. However, the reasons for concluding this are conspicuously absent from the orders. The petitioners have already been punished once for the crime they have been convicted for and citing the same as a means to deny them premature release would amount to double jeopardy. There is no reason to deny premature release to petitioners who have maintained good behaviour and availed multiple paroles and furloughs and surrendered on time, without recording of any untoward incidents.

10. Moreover, a Co-ordinate bench of this Court in **Subhash v. State of Haryana 1994(3) R.C.R.(Criminal) 489** has held that involvement in other offences would not be a ground to deny the concession of premature release. Speaking through Justice V.K. Jhanji, the following was observed:

> *"4. It has been held in **Lila Singh v. State of Punjab, 1988(1) RCR 28** that reasoning given in the order declining premature release to the petitioner-convict that he had committed jail offences and his release will prove hazardous to peace and tranquillity in the locality are no legal reasons to decline premature release. The reasoning was on the basis that the convict has already undergone imprisonment for committing jail offences and there is no material to hold that his release is likely to prove hazardous to peace and tranquillity in the locality. Thus, it was held that the jail offences committed by the convict for which he has already been punished, cannot be taken into consideration while deciding the case of the petitioner for his premature release."*

Reliance in this regard can also be placed on **Kamal Kant Tiwari v. State of Punjab and others 2014(2) R.C.R.(Criminal) 940** and **Lila Singh v. State of Punjab 1988(1)R.C.R(Criminal) 28.** A perusal of the policies dated 04.02.1993, 12.04.2002 and 13.08.2008 indicates that involvement in other criminal cases does not make an applicant ineligible for grant of premature release.

11. The entire edifice of exercise of judicial or quasi-judicial power rests on the foundation of giving reasoned and detailed orders. It is a fundamental principle of natural justice and ensures that there is proper and due application of mind while exercising said power. Therefore, the practice of arbitrarily categorising convicts as threats to society or indiscriminately deferring their cases for premature release needs to be strongly discouraged. It is expedient that the competent authority does not act in a ritualistic fashion and application of mind is discernable.

12. A two Judge bench of the Hon'ble Supreme Court in **State of Haryana Vs. Jagdish AIR 2010 SC 1690,** speaking through Justice Dr. B.S. Chauhan laid down the parameters to consider while deciding upon the question of premature release:

> *"38. At the time of considering the case of pre-mature release of a life convict, the authorities may require to consider his case mainly taking into consideration*
> *1. whether the offence was an individual act of crime without affecting the society at large;*
> *2. whether there was any chance of future recurrence of committing a crime;*
> *3. whether the convict had lost his potentiality in committing the crime;*
> *4. whether there was any fruitful purpose of confining the convict any more;*
> *5. the socio-economic condition of the convict's family and other similar circumstances."* (enumeration added)

13. While the petitioners herein have committed grave and serious offences, once a duly enacted policy is in existence, it must be honoured and applied to each case in its letter and spirit. 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 sentence is served. The idea was well explained Justice Krishna Iyer in **Mohammad Giasuddin v. State of Andhra Pradesh (1977) 3 SCC 287** where he stated that *"the sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturalisation"*.

14. *A* two Judge bench of the Hon'ble Supreme Court in **Ravada Sasikala v. State of AP AIR 2017 SC 1166,** has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused. A two Judge bench of the Hon'ble Supreme Court in **Karamjit**

Singh v. State (Delhi Admn.), speaking through Justice D.P. Mohapatra, made the following observations:

> *"Punishment in criminal cases is both punitive and reformative. The purpose is that the person found guilty of committing the offence is made to realise his fault and is deterred from repeating such acts in future. The reformative aspect is meant to enable the person concerned to relent and repent for his action and make himself acceptable to the society as a useful social being. In determining the question of proper punishment in a criminal case, the court has to weigh the degree of culpability of the accused, its effect on others and the desirability of showing any leniency in the matter of punishment in the case. An act of balancing is, what is needed in such a case; a balance between the interest of the individual and the concern of the society; weighing the one against the other. Imposing a hard punishment on the accused serves a limited purpose but at the same time, it is to be kept in mind that relevance of deterrent punishment in matters of serious crimes affecting society should not be undermined. Within the parameters of the law an attempt has to be made to afford an opportunity to the individual to reform himself and lead the life of a normal, useful member of society and make his contribution in that regard. Denying such opportunity to a person who has been found to have committed offence in the facts and circumstances placed on record would only have a hardening attitude towards his fellow beings and towards society at large. Such a situation, has to be avoided, again within the permissible limits of law."*

15. A three Judge bench of the Hon'ble Supreme Court in **Rajendra Pralhadrao Wasnik v. State of Maharashtra, (2019) 12 SCC 460**, speaking through Justice Madan B. Lokur made the following observations:

> *"47. Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasised. Until **Bachan Singh**, the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. **Bachan Singh** placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in **Bariyar** and in **Sangeet v. State of Haryana** where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in **Sangeet,** "In the sentencing process, both the crime and the criminal are equally important." Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime,*

> *can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken. The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible*."

16. It would be naive to hope for a society without crime, however, it would be in line with the welfarist approach of State to make an attempt towards rehabilitation of offenders and allow them to reshape themselves as a functional member of the society. The overarching goal of punishment is deterrence and the sentiment must not be weaponised to glamorise savage justice. People from all walks of life hold the idea of liberty close to their heart and have historically done everything in their power to not part from it. For a convict serving a life sentence, liberty has to be the most precious of possessions. It should not be assumed that all convicts when released will unleash revenge onto their prosecutors. The convict's conduct in jail, state of mind, gravity of the offence, social background and behaviour while on parole must be duly considered before deciding upon the question of his premature release. In the words of Justice Krishna Iyer, "*Social Justice is the signature tune of our Constitution and the little man in peril of losing his liberty is the consumer of Social Justice.*"

CONCLUSION

17. Having heard learned counsel for the parties and after perusing the record with their able assistance, grounds on which the cases of the petitioner(s) were rejected, are categorized as under:-

(i) **Involvement in other cases or jail offences.**

In view of the law laid down by the Hon'ble Supreme Court of India in ***Lila Singh's case, Subhash's case*** and ***Kamal Kant Tiwari's case*** (supra), involvement of the convict in other cases or jail offences cannot be a ground to deny the concession of premature release.

(ii) **Premature release of convicts would pose threat to security.**

In case, the convict has been periodically released on furlough/parole and during his release, he did not indulge in any such activity which disturbed the public peace or posed a threat to the society, rejection of his application for premature release on the ground that same would pose to be a serious threat to the society, is not sustainable.

(iii) **Deferred in the absence of any specific provision in the applicable policy or rejected/deferred on the ground of offences being grave and serious in nature.**

In the absence of any specific provision in the applicable policy at the time of conviction of the convict, the competent authority cannot act arbitrarily and defer the cases of prisoners for premature release especially by applying the rigours of change of policy, in view of the law laid down in ***Rajkumar's case*** (supra).

(iv) **Opinion of Presiding Officers.**

The concession of premature release cannot be denied because the case was not recommended by the Presiding Officer as his opinion is not binding. The Presiding Officers are required to scrupulously follow the instructions issued by the Registrar

vide letter bearing No.622/Spl/Gnz 11.17, with regard to rendering the opinion in terms of Section 432(2) of the Cr.P.C.

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 Vs. D.K. Tiwari and another,*** COCP No. 2020 of 2022 decided on 30.01.2023.

19. In view of the above, impugned orders challenged in all the petitions are set aside and the competent authorities are directed to consider the cases of the petitioner(s) afresh within a period of three months from the date of receipt of certified copy of this order, in view of the directions issued by this Court supra.

20. This Court records its deep appreciation for the assistance provided by Mr. Akshay Jindal, Advocate as *amicus curiae.*

21. All the petitions are disposed of with the above directions.

22. Registry is directed to circulate a copy of this judgment to the Secretaries, District Legal Services Authority across the States of Punjab and Haryana and the Union Territory of Chandigarh for information and due compliance.

23. Registry is also directed to circulate a copy of this judgment to the Home Secretaries for the States of Punjab, Haryana and the Union Territory of Chandigarh for information and due compliance.

(HARPREET SINGH BRAR)
JUDGE

February 05, 2024
Pankaj*

Whether speaking/reasoned Yes

Whether reportable Yes