

Before Mukul Mudgal, C.J. and Ajay Tewari, J.

COURT ON ITS OWN MOTION,—Petitioner

versus

STATE OF PUNJAB,—Respondent

CWP No. 20241 of 2008

16th September, 2010

Constitution of India, 1950—Art.226—Convicts availing remissions more than that of actual sentence undergone by them and even in heinous cases in a very casual manner—State Government framing a policy for grant of benefit of remission to prisoners as per period of sentence and making grant of remission more orderly and rationally—State Government directed to notify said policy within two weeks.

Held, that the policy framed by the State Government lays down the class of prisoners who would be entitled to get the benefit of remission and also the period of remission to be granted to the prisoners as per the period of sentence awarded to them. In the policy, State has also clarified a class of convicts who would not be entitled to avail the benefit of remission. Thus, the policy formulated would make the grant of remission more orderly and rationally. Since a policy has been framed by the State, no further direction in the matter is required. Therefore, the writ petition is disposed of with a direction to the State Government to notify the said policy within two weeks from today and thereafter to ensure that the said policy is strictly given effect to.

(Para 4 & 5)

Amit Chopra, Advocate (Amicus Curiae).

Ms. Madhu Dayal, Addl. A.G. Punjab.

MUKUL MUDGAL, C.J. (ORAL)

(1) Learned Single Judge of this Court while hearing the criminal appeals noticed that in some of the cases, the remissions were granted to the convicts more than the actual sentence they had undergone. In his order

dated 19th November, 2008, learned Single Judge has taken a note of the following three cases wherein the convicts had availed remission period more than that of the actual sentence undergone by them :—

“(i) Crl. Appeal No. 1707-SB of 2003 (Prithvi Kumar Dass versus State of Punjab) decided on 7th August, 2008

In case FIR No. 56 dated 6th February, 2002 under Section 376 IPC, the appellant was convicted on 6th August, 2003 by the Court of Shri S.N. Aggarwal, the then learned Sessions Judge, Jalandhar and sentenced to undergo rigorous imprisonment for a period of ten years. As per the custody certificate presented before this Court, the appellant was released from Jail on 26th November, 2006 after having undergone actual sentence for a period of 4 years 6 months and 20 days and availing the remissions to the extent of 5 years, 5 months and 10 days.

(ii) Crl. Appeal No. 964 of 2003 (Mohinder Pal versus State of Punjab)

In yet another case (FIR No. 73 dated 21st April, 2002 under Sections 376/511 of the Indian Penal Code), the appellant was convicted on 7th March, 2003 by the Court of Shri Sanjeev Berry, the then learned Addl. Sessions Judge, Fast Track Court, Kapurthala, and sentenced to undergo rigorous imprisonment for a period of seven years. As per the custody certificate, presented before this Court, the appellant was released from jail on 19th November, 2005 after having undergone actual sentence for a period of 2 years, 7 months and 20 days and availing the remissions to the extent of 4 years, 4 months and 10 days.

(iii) Crl. Appeal No. 715-SB of 2004 (Hans Singh versus State of Punjab) decided on 14th August, 2008

In another case (FIR No. 61 dated 25th October, 2001 under Sections 304-B of the Indian Penal Code), the appellant was convicted on 24th February, 2004 by Court of Shri J.S. Chawla, the then learned Addl. Sessions Judge, Moga, and

sentenced to undergo rigorous imprisonment for a period of ten years. As per the affidavit, presented before this Court, the appellant was released from jail on 1st October, 2007 after availing the remissions to the extent of 5 years, 2 months and 2 days.”

(2) Learned Single Judge further noticed that the convicts had been allowed remissions even in heinous cases in a very casual/liberal/lackadaisical manner. The note of the learned Single Judge was placed before the then Chief Justice on 25th November, 2008 whereon *suo motu* notice of the matter was taken. That is how this writ petition by the Court on its own motion had arisen.

(3) Upon notice, the State of Punjab filed various affidavits explaining as to how the remissions were granted in the cases notice whereof was taken by the learned Single Judge. On 7th August, 2009, Addl. Advocate General appearing on behalf of the State of Punjab made a statement that the the issue as to whether the parameters for remission have to be redrawn in terms of order dated 19th November, 2008 passed by the learned Single Judge will be reconsidered. Pursuant to that statement, an affidavit has been filed by Under Secretary to Government of Punjab, Department of Home Affairs and Justice, Chandigarh which indicates that a policy for remission of prisoners in the Jails situated in the State of Punjab has been set out to the following effect :—

POLICY

1. (i) This policy may be called the Punjab Grant of Remission of Punishment Policy, 2010.
(ii) It shall come into force with immediate effect.
2. The remission to be granted under this Policy, shall be subject to the following conditions, namely :—
 - (a) Where a person has been sentenced to imprisonment :—
 - (i) for a period of ten years; or
 - (ii) for a period, exceeding five years, but not exceeding ten years, the good conduct of the person for the last five years shall be taken into consideration.

Explanation.— For treating the conduct of a person as a good conduct, he should not have been punished for an offence in the jail ;

- (b) The remission, to be granted at one time, shall be as follows :—
- (i) Prisoners sentenced to imprisonment for more than 10 years and up to 20 years : 1 Year
 - (ii) Prisoners undergoing sentence of more than 7 years and up to 10 years .. 9 months
 - (iii) Prisoners undergoing sentence of more than 5 years and up to 7 years .. 6 months
 - (iv) Prisoners undergoing sentence of more than 3 years and up to 5 years .. 3 months
 - (v) Prisoners undergoing sentence below 3 years .. 1 months

Provided that in exceptional deserving cases, the remission may be granted at such scale and in such quantum, as may be determined by the State Government,

- (c) If a person is on parole or furlough, the remission shall be granted to him only, if he surrenders himself in the jail before the expiry of period of parole or furlough ; and
 - (d) The remission to be granted, shall be subject to the provisions of section 433-A of the Code of Criminal Procedure, 1973
3. Notwithstanding anything contained in this policy, no remission shall be granted to a person in the following cases, namely :—
- (i) Where a person has been convicted for an offence, investigated by the Delhi Special Police Establishment or by any other agency empowered to make investigation into an offence under any Central Law other than the Code of Criminal Procedure, 1973;

- (ii) In the case, involving misappropriation or destruction or damage to any property belonging to the Central Government;
- (iii) Where an offence has been committed by a person, who is in the service of the Central Government, while acting or purporting to act in the discharge of his official duty ;
- (iv) Where the person is convicted of an offence under Sections 3, 4, 5, 6 and 10 of the Official Secrets Act, 1923 or under Sections 2 and 3 of the Criminal Law Amendment Act, 1961 ;
- (v) Where the person is sentenced under :—
 - (a) The Foreigners Act, 1946 ; or
 - (b) The Passport Act, 1967 ; and
 - (c) The Narcotic Drugs and Psychotropic Substances Act, 1985 ;
- (vi) Where the conviction is for an offence, committed under any of the State or Central Acts, which bar the grant of remission ;
- (vii) In the cases, pertaining to foreign nationals ;
- (viii) Where the detenues from a class ;
- (ix) Where a person is imprisoned for failing to give security for keeping peace for good behaviour under Sections 107, 108 109 and 110 of the Code of Criminal Procedure, 1973 ;
- (x) Where a person is undergoing sentence, in default of payment of fine ;
- (xi) Where the sentence of death has been commuted into imprisonment for life either under Section 433 of the Code of Criminal Procedure, 1973 or under Article 72 or Article 161 of the Constitution of India ;

- (xii) Where an offence is committed under Section 302 of the Indian Penal Code, 1860 with the intention to collect ransom or committing robbery or dacoity or kidnapping or abduction.
- (xiii) Where an offence is committed under Section 302 or 304 of the Indian Penal Code, 1860 read with Sections 376 to 376-D or 377 of the Indian Penal Code.
- (xiv) Where an offence is committed under Section 302 or 304 of the Indian Penal Code, 1860 and the victim is a child under the age of 14 years ;
- (xv) Where the conviction is made under Section 376 of the Indian Penal Code, 1860 and rape has been committed with a minor girl; ;
- (xvi) Where an offence is committed under Sections 4 and 5 of the Explosive Substances Act, 1908 alongwith an offence under the Terrorist and Disruptive Activities (Prevention) Act, 1987 or the Prevention of Terrorism Act, 2002 or any offence under the provisions of the Indian Penal Code, 1860; and
- (xvii) Where the conviction is made under Section 120-B of the Indian Penal Code, 1860 for any of the offences specified in this clause.”

(4) The policy framed by the State Government lays down the class of prisoners who would be entitled to get the benefit of remission and also the period of remission to be granted to the prisoners as per the period of sentence awarded to them. In the policy, State has also clarified a class of convicts who would not be entitled to avail the benefit of remission. Thus, the policy formulated would make the grant of remission more orderly and rationally.

(5) Since a policy has been framed by the State, no further direction in the matter is required. Therefore, the writ petition is disposed of with a direction to the State Government to notify the said policy within two weeks from today and thereafter to ensure that the said policy is strictly given effect to.