Reserved: 26.05.2025
Pronounced on: 29.05.2025

CRM-W-556-2025 in
CRWP-2705-2023

RUPINDER SINGH VS STATE OF PUNJAB AND OTHERS

CRWP-11354-2024 (O&M)

RUPINDER SINGH VS STATE OF PUNJAB AND OTHERS

Present: Mr. Pardeep Bajaj, DAG, Punjab
for the applicant-State (CRM-W-556-2025) and
for the respondents-State (in CRWP-11354-2025).

Mr. Nandan Jindal, Advocate and
Mr. Tushar Sabherwal, Advocate
for the petitioner (in CRWP-11354-2025) and
for the non-applicant/petitioner (CRM-W-556-2025).

****

1. **CRM-W-556-2025** is preferred under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 seeking recalling/reviewing/modification of the order dated 16.01.2024 passed by this Court in CRWP-2705-2023 in view of the liberty granted by the Hon'ble Supreme Court vide order dated 24.03.2025.

2. **CRWP-11354-2024** has been filed under Article 226 of the Constitution of India seeking issuance of a writ in the nature of certiorari seeking quashing of order dated 30.10.2024 (Annexure P-3) passed by respondent No.1, vide which case of the petitioner for premature release has been rejected.

FACTUAL BACKGROUND

3. Briefly, the facts are that the petitioner was convicted by learned Sessions Court, Hoshiarpur vide judgment dated 11.08.2014 in the case stemming from FIR No.80 dated 10.08.2013 under Section 302 of the Indian Penal Code, 1860, registered at Police Station Garhshankar, District Hoshiarpur.

Aggrieved by the same, he preferred an appeal before this Court, which was dismissed vide judgment dated 03.10.2019. A Special Leave Petition was also moved by him before the Hon'ble Supreme Court, which was dismissed vide order dated 22.11.2019.

4. Thereafter, the petitioner moved an application for premature release under policy dated 08.07.1991. Subsequently, a criminal writ petition was moved before this Court seeking directions for release of the petitioner. The same was disposed of vide order dated 16.01.2024, whereby the official respondents were directed to consider the case of the petitioner within a period of two months. Aggrieved by the same, the State of Punjab moved a Special Leave Petition No.8076/2025 before the Hon'ble Supreme Court, wherein the following order was passed on 24.03.2025:

> *"1. After arguing for sometime, learned counsel appearing for the petitioner-State of Punjab seeks leave to withdraw this special leave petition. He also seeks leave to approach the High Court with a review petition in view of the fact that certain relevant policies were not placed before the High Court.*
> *2. Permission granted.*
> *3. The special leave petition is dismissed as withdrawn, with the liberty as prayed.*
> *4. However, if the review petition is dismissed, the petitioner-State of Punjab shall be at liberty to challenge the parent order in a fresh special leave petition."*

CONTENTIONS

5. Learned State counsel-applicant submits that the whole premise of the case of the petitioner is fallacious, as all four policies issued in the years

1991, 2011, 2013 & 2017, respectively, for premature release, applicable in the State of Punjab have the same prerequisites sentence and no amendment has been carried out in this regard. Therefore, the argument put forth by learned counsel for the petitioner is required to be rejected as it cannot be said that a new policy has been formulated, since merely a clarification regarding interpretation of a pre-existing provision has been issued.

6. Earlier, the parole period was wrongly being subtracted from the total sentence (Total sentence= Actual undergone + Remission – Parole) by the competent authority, for the purposes of premature release. As per reply by way of affidavit dated 23.05.2025 of Additional Chief Secretary, Department of Jails, Punjab, it was subsequently realized that the same was based on incorrect interpretation of Section 3(3) of the Punjab Good Conduct of Prisoners (Temporary Release) Act, 1962 (for short 'Act of 1962'). Therefore, a meeting of the State level committee, headed by Principal Secretary, was held on 16.03.2020 and the following formula was prescribed:

Actual Sentence =	Custody during under trial	+	Custody post conviction	-	Parole period

7. A specific stand has been taken by the respondent(s) in para No.8 & 9 of the preliminary submissions of the affidavit dated 23.05.2025 that any Rule or Policy made under any law is subordinate to the legislation enacted on the subject. All the applicable policies have been formulated in consonance with the

provisions of Act of 1962 as is the formula prescribed in the meeting dated 16.03.2020.

8. As such, applying the abovementioned formula, the petitioner does not meet the condition of 10 years of actual sentence and 14 years of total sentence, as stipulated by the policy dated 08.07.1991. The details of his custody, as available in the custody certificate (Annexure R-1), are provided below:

Sr. No.	Particulars	Period	Year	Months	Days
1.	Custody as under trial	12-08-2013 to 13-08-2014	01	00	01
2.	Custody after Conviction	14-08-2014 to 09-05-2025	10	08	25
3.	Interim Bail period, if any (-)		00	00	00
4.	Parole availed (-)	(-)	03	03	01
5.	Furlough availed		00	02	17
6.	Detail of overstay/absent from parole/furlough (-)		00	00	00
7.	Actual custody period after conviction [S. No.2, 3, 4 & 6]		07	05	24
8.	Actual Undergone period [Sr.No.1 +7]		08	05	25
9.	Earned Remission + GR (+)		07	10	20
10.	Total Sentence including remission [Sr.No.8+9]		16	04	15

9. To further buttress his argument, learned State counsel places reliance upon the judgment rendered by a two Judges Bench of the Hon'ble Supreme Court in ***Rohan Dhungat etc. Vs. The State of Goa and others etc., 2023***

AIR (Supreme Court) 265, where, speaking through Justice M.R. Shah, the following was observed: -

> *"If the submission on behalf of the prisoners that the period of parole is to be included while considering 14 years of actual imprisonment is accepted, in that case, any prisoner who may be influential may get the parole for number of times as there is no restrictions and it can be granted number of times and if the submission on behalf of the prisoners is accepted, it may defeat the very object and purpose of actual imprisonment. We are of the firm view that for the purpose of considering actual imprisonment, the period of parole is to be excluded. We are in complete agreement with the view taken by the High Court holding so."*

10. Learned State counsel has laid much emphasis on the argument that taking a different approach would allow an influential convict, who may be able to secure parole more frequently, to be released prematurely without undergoing the mandatory actual sentence of 10 years, in direct violation of the applicable policy. As such, the clarification provided in the meeting dated 16.03.2020 is the correct interpretation of Section 3(3) of Act of 1962, therefore, the review application filed by the State of Punjab deserves to be allowed.

11. *Per contra*, learned counsel for the non-applicant/petitioner, *inter alia,* contends that the petitioner has been in custody since the year 2013. The case of the petitioner falls under category 'C' of the applicable policy, which requires him to have completed 10 years of actual sentence and 14 years of total sentence, to be eligible for premature release. However, the petitioner has

already undergone over 10 years in actual custody and including remission, he has completed over 14 years of sentence. The petitioner also enjoyed the concession of parole, which has been wrongly deducted from the actual sentence as opposed to total sentence, based on an incorrect interpretation of Section 3(3) of the Act of 1962. Since the petitioner has already completed the requisite sentence as stipulated by the policy dated 08.07.1991 i.e. the applicable policy at the time of his conviction, he deserves to be released.

12. He further submits that the reliance placed on ***Rohan Dhungat****'s case(supra)* is unfounded as it refers to the State of Goa, where the Rules may differ from those prevalent in the State of Punjab. Moreover, the conduct of the concerned authorities is arbitrary and discriminatory, which is violative of the rights enshrined under Articles 14, 19 and 21 of the Constitution of India. Reliance in this regard is placed on the judgments rendered by the Hon'ble Supreme Court in ***Raj Kumar Vs. State of Uttar Pradesh, 2024(9) SCC 598*** and ***State of Haryana and others Vs. Jagdish, 2010 AIR (Supreme Court) 1690.***

13. Further, the clarification dated 16.03.2020 cannot be applied retrospectively as held by this Court in ***Jai Kishan @ Bhola Vs. State of Punjab*** *in* ***CRWP-7180-2021*** *decided on 11.02.2022.* Pertinently, the Special Leave Petition preferred against the same was dismissed by the Hon'ble Supreme Court. A similar approach was also taken by this Court in ***Baljeet Singh @ Rangi Vs. State of Punjab and others*** *in* ***CRWP-2957-2022*** *decided on 20.07.2022*. Further, reliance can be placed on the judgment rendered by this

Court in ***Jinda Vs. State of Haryana, 200(3) R.C.R. (Crl.) 640.*** He further submits that the State has issued a clarification to the policy of 1991 vide meeting dated 16.03.2020 i.e. after a lapse of about 29 years. It is highly absurd to abruptly take a contrary view to the consistent approach adopted for 29 years on the pretext of incorrect interpretation of law. For almost three decades, one consistent approach was adopted and similarly situated convicts were released prematurely after deducting parole period from total sentence. In doing so, the State has created unnecessary litigation, subjecting multiple applicants to further harassment.

OBSERVATIONS AND ANALYSIS

14. Having heard learned counsel for the parties and after perusing the record of the cases with their able assistance, it appears that the following question requires adjudication:

> *'Whether the parole period should be deducted from the actual sentence or the total sentence undergone by the applicant?'*

- **Applicable Policy**

15. It is no longer *res integra* that the policy in force at the time of conviction of the applicant shall apply when his case for premature release is under consideration. Therefore, the petitioner is entitled to have his case considered for premature release in terms of policy dated 08.07.1991 issued by the Government of Punjab. A Constitution Bench of the Hon'ble Supreme Court

in ***Rajkumar***'s case (*supra*), speaking through then 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."* (emphasis added)

16. Further, a two Judge Bench of the Hon'ble Supreme Court in ***Jagdish***'s case (*supra*), speaking through Justice B.S. Chauhan, has held as under:

> *"43.* ***The right of the respondent prisoner, therefore, to get his case considered at par with such of his inmates, who were entitled to the benefit of the said policy, cannot be taken away by the policy dated 13.08.2008.*** *This is evident from a bare perusal of the recitals contained in the policies prior to the year 2008, which are referable to Article 161 of the Constitution. The High Court , therefore, in our opinion, was absolutely justified in arriving at the conclusion that the case of the respondent was to be considered on the strength of the policy that was existing on the date of his conviction.* ***State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the***

> ***time of his conviction that his case for pre-mature release would be considered after serving the sentence, prescribed in the short sentencing policy existing on that date.*** *The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent.* ***In case a liberal policy prevails on the date of consideration of the case of a "life" for pre-mature release, he should be given benefit thereof****."* (emphasis added)

- **Interpretation of Section 3(3) of the Act of 1962**

17. The present controversy entirely revolves around the interpretation of Section 3(3) of the Act of 1962. An identical provision has been provided under Section 3(3) of the Haryana Good Conduct of Prisoners (Temporary Release) Act, 1988 (for short 'Act of 1988'). The same is reproduced below for ready reference:

> ***"Section 3 -*** *(3) The period of release under this section shall not count towards the total period of the sentence of a prisoner."*

18. A fundamental rule, while engaging in interpretation of statutes, is to ensure that the legislative intent is not defeated. Moreover, where the provision is spelled out in an unambiguous manner, the same must be interpreted in a way that is natural and grammatically sound, unless doing so could lead to injustice or absurdity. Where the statute is clear in its intention and terminology, there is no reason to engage in the exercise of interpretation. A Constitution Bench of the Hon'ble Supreme Court in ***Dadi Jagannadham Vs. Jammulu Ramulu, (2001) 7 SCC 71,*** speaking through Justice S.N. Variava, the following was observed:

> ***“13. We have considered the submissions made by the parties. The settled principles of interpretation are that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature.*** *Undoubtedly if there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court could not add words to a statute or read words into it which are not there, especially when the literal produces an intelligible result. The Court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there.”* (emphasis added)

19. Recently, a three Judges Bench of the Hon’ble Supreme Court in ***Ajay Kumar Radheyshyam Goenka Vs. Tourism Finance Corporation of India Limited, (2023) 10 SCC 545,*** speaking through Justice J.B. Pardiwala, the following was observed:

> *“76. The distinction between a strict construction and a more free one has disappeared in the modern times and now mostly the question is, "what is the true construction of the statute?" A passage in Craies on Statue Law 7th Edn. reads to the following effect:-*
>
> > *"The distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules.' All modern Acts are framed with regard to equitable as well as legal principles.' "A hundred years ago", said the court in Lyons' case, "statutes were required to be perfectly precise and resort was not had to a reasonable construction of the Act, and thereby criminals were*

> ***often allowed to escape. This is not the present mode of construing Acts of Parliament. They are construed now with reference to the true meaning and real intention of the legislature.****"*
>
> *77. At page-532 of the same book, observations of Sedgwick are quoted as under:*
>
> *"**The more correct version of the doctrine appears to be that statutes of this class are to be fairly construed and faithfully applied according to the intent of the legislature without unwarrantable severity on the one hand or unjustifiable lenity on the other, in cases of doubt the courts inclining to mercy.**" ”* (emphasis added)

20. Further, a Division Bench of this Court in ***Rajesh Kumar Sharma Vs. State of Punjab, 2024(1) R.C.R.(Civil) 126***, also opined as follows:

> *“23.2. It is trite law that **a statute should be read as it is and this Court cannot contort the same and read something which is not expressly provided therein**. The Hon'ble Supreme Court in B. Premanand and others v. Mohan Koikal and others, (2011) 4 SCC 266, has articulated the principle governing the interpretation of the statute and reiterated the literal rule of interpretation by observing the following:-*
>
> > *"30. The literal rule of interpretation really means that there should be no interpretation. In other words, we should read the statute as it is, without distorting or twisting its language.*
> > *31. We may mention here that the literal rule of interpretation is not only followed by Judges and lawyers, but it is also followed by the lay man in his ordinary life. To give an illustration, if a person says "this is a pencil", then he means that it is a pencil; and it is not that when he says that the object is a pencil, he means that it is a horse, donkey or an elephant. In other words, the literal rule of interpretation simply means that we mean what we say and we say what we mean. If we do not follow the literal rule of interpretation,*

social life will become impossible, and we will not understand each other. If we say that a certain object is a book, then we mean it is a book. If we say it is a book, but we mean it is a horse, table or an elephant, then we will not be able to communicate with each other. Life will become impossible. Hence, the meaning of the literal rule of interpretation is simply that we mean what we say and we say what we mean."

23.3 A three Judge Bench of the Hon'ble Supreme Court in State of H.P. v. Pawan Kumar (2005) 4 SCC 350, speaking through Justice G.P. Mathur, while stating that the ***cardinal rule of interpretation of statutes is to read the statute literally and give the words their grammatical and natural meaning*** *has held as under:-*

"7. One of the basic principles of interpretation of Statutes is to construe them according to plain, literal and grammatical meaning of the words. ***If that is contrary to, or inconsistent with, any express intention or declared purpose of the Statute, or if it would involve any absurdity, repugnancy or inconsistency, the grammatical sense must then be modified, extended or abridged, so far as to avoid such an inconvenience, but no further. The onus of showing that the words do not mean what they say lies heavily on the party who alleges it.*** *He must advance something which clearly shows that the grammatical construction would be repugnant to the intention of the Act or lead to some manifest absurdity (See Craies on Statute Law, Seventh ed. page 83-85). In the well known treatise - Principles of Statutory Interpretation by Justice G.P. Singh, the learned author has enunciated the same principle that the words of the Statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context or in the object of the Statute to suggest the contrary (See the Chapter - The Rule of Literal Construction -p.78 - 9th Edn.). This Court has also followed this principle right from the beginning. In Jugalkishore Saraf v. M/s Raw Cotton Co. Ltd. AIR 1955 SC 376, S.R. Das, J. said:*

> *"The cardinal rule of construction of statutes is to read the statute literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning the Court may adopt the same. But if no such alternative construction is possible, the Court must adopt the ordinary rule of literal interpretation." "* (emphasis added)"

21. Further still, Section 59 of the Prisons Act, 1894 (for short 'Act of 1894') bestows the power to make rules concerning administration of affairs of the prison, on the State government. Sub-clause 21 of the Section 59(1) is reproduced below:

> ***"Section 59. Power to make rules-***
>
> *(1) The State Government may by notification in the Official Gazette make rules consistent with this Act,*
>
> *(21) for rewards for good conduct."*

22. On that note, a study of the Punjab Prison Rules, 2022 (for short 'Rules of 2022') is warranted. Rule 12.27 of the same reads as follows:

> ***"12.27 Premature release of life convicts.-***
> *The Government shall formulate a policy for premature release of life convicts under section 433-A, read with Section 433-A of the Criminal Procedure Code, 1973, and guidelines issued for premature release of life convicts under Article 161 of the Constitution of India."*

23. Using the abovementioned rule making power, the applicable policy i.e. policy dated 08.07.1991 was framed by the State of Punjab. However, neither

Rule 12.27 of the Rules of 2022 nor the said policy provides any explicit instruction to deduct parole period from the actual undergone sentence. Curiously, in its meeting dated 16.03.2020, a clarification was issued after 29 years from issuance of the policy dated 08.07.1991 by a State-level Committee *de hors* the legislative mandate and citing Section 3(3) of the Act of 1962, the following formula was prescribed:

Actual Sentence	=	Custody during under trial	+	Custody post conviction	-	Parole period

24. After considerable thought, this Court is unable to agree with this interpretation and finds the reasoning put forth by learned State counsel beyond comprehension. First and foremost, it is clarified that the words *'total'* and *'actual'* are distinct terms with specific meanings. The Cambridge Dictionary defines *'total'* as an aggregate of smaller parts while *'actual'* is defined as something that is existing in fact. As such, actual sentence must be interpreted to mean the real time spent by a prisoner behind bars, and therefore, has two parts only i.e. (i) Actual time undergone in custody as an undertrial and (ii) Actual time undergone as a convict. Thus, the quantum of actual sentence is a matter of fact, a constant number, which neither increases nor decreases by release of an accused on parole. Similarly, grant of interim bail, furlough, suspension of sentence etc. does not, in any manner, increase or decrease the actual undergone period of sentence.

25. As such, total sentence, for the purpose of premature release, would include the actual sentence undergone by the prisoner and the remission earned by him. Pertinently, Section 3(3) of the Act of 1962 only talks about parole not being counted towards assessing the quantum of total sentence, which must be interpreted to mean that parole ought to be subtracted from it. In essence, Section 3(3) of Act of 1962 only talks about total sentence and any other interpretation would be antithetical to the object of the Act of 1962. The clarification dated 16.03.2020, made about three decades post issuance of policy dated 08.07.1991 has no statutory backing and the same cannot override and supersede the Act of 1962. In that vein, the explicit stipulation of deduction of parole from total sentence contained in Section 3 of Act of 1962 cannot be superseded by inserting a definition of parole, as provided under Rule 1.03 (55) of Rules of 2022, which reads as follows:

> *"(55) "parole" means release of prisoners on temporary release under the provisions of Section 3 of the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962 as amended from time to time. Period spent on parole shall not count towards actual period of awarded sentence."*

26. The observation of this Court is further fortified by the ratio of law laid down by the judgment rendered by a Full Bench of Allahabad High Court in ***Vijay Singh and others Vs. State of Uttar Pradesh, 2004 SCC Online All 1656.***

- **<u>Policy Applicable in the State of Haryana</u>**

27. While the premature release policies formulated by the State of Haryana are not under challenge, for the sake of clarity, the same is also briefly analysed. Vide notification dated 13.08.2008, the State of Haryana issued a policy for premature release and also prescribed a formula for calculating the period of sentence. It was specified therein that the period of parole must be deducted from the total sentence (i.e. actual custody + (plus) remission – (minus) parole). The para No.3 of the said policy reads as under:

> *" 3.**<u>The formula for calculating period of sentence undergone shall be as follows:</u>***
>
> *A person convicted and sentenced for life imprisonment on 1.1.1990 had completed his 14 years actual sentence on 31.12.2003 and during the above said sentence period, he had availed parole for 14 months, his actual sentence undergone will be treated as 14 years and not as 12 years, 12 months. If during this period, he has earned five years total remission, his total sentence period will be calculated as under :*

	Y	*D*	*M*
Under Trial Period :	*00*	*00*	*00*
Period of sentence undergone :	*14*	*00*	*00*
Add Remission earned :	*05*	*00*	*00*
	19	*00*	*00*
Less parole period	*01*	*02*	*00*
Total sentence undergone	*17*	*10*	*00*

> *His case will be eligible for premature release only when he completes 20 years of total sentence."*

28. Thereafter, the State of Haryana made a somersault in the Haryana Prison Rules, 2022 (hereinafter referred to as 'Haryana Rules of 2022') and adopted an altogether different yardstick for calculating the total sentence. Rule 2(xiii) stipulates that parole period would not be counted towards actual sentence. The same reads as follows:

> ***"2. Definitions***
> *(xiii)* ***"parole"*** *means the temporary release of a convicted prisoner from custody on account of good behaviour over a period of time as specified by the relevant Act and rules framed thereunder. The period spent on parole shall not be counted towards actual sentence."*

29. As opposed to the formula provided in the policy dated 13.08.2008, which specifies that the parole must be deducted from the total sentence (i.e. Actual custody + remission earned) and a different formula contrary to the above was inserted in Rule 187(6) of Haryana Rules of 2022 and the same reads as follows:

> ***"187. Premature release of convicts***
> ***(6)The formula for calculating the period of sentence undergone shall be as follows:***
> *A person convicted and sentenced for life imprisonment on the 21st January, 2006 who has been in custody since the 1st January, 2004. During the above-said sentence period, he had availed parole for fourteen months and overstayed parole for ten days. Then on the 31 st December, 2017, his actual sentence undergone will be twelve years nine months, and twenty days. If during this period he has earned six years ten months twenty days total remission, his total sentence period will be calculated for example i.e. as under:*

	Y	*M*	*D*
Under Trial Period	*02*	*00*	*20*
Conviction Period	*11*	*11*	*10*
Less parole period	*01*	*02*	*00*
Less overstay period (parole/furlough)	*00*	*00*	*10*
Actual Sentence undergone	*12*	*09*	*20*
Add remission earned	*06*	*10*	*20*
Total Sentence undergone	*19*	*08*	*10*

30. The clarification dated 16.03.2020 issued after 29 years as well as the provisions made in Rule 1.03(55) of Punjab Rules of 2022 and Rule 2 as well as Rule 187 of Haryana Rules of 2022 firstly can be applied only prospectively in terms of the judgment of the Hon'ble Apex Court in ***Raj Kumar***'s case (*supra*) and ***Jagdish***'s case (*supra*). Further, both the State Governments cannot override and obliterate explicit provision made in Section 3(3) of Act of 1962 by invoking the rule making power provided under Section 59 of the Prisons Act, 1894. Such an attempt is not permissible in view of the settled law.

- **<u>Parent Act prevails over the Rules and the Executive instructions</u>**

31. It is trite law that any rules made by the Executive cannot supersede the parent Act. The approach adopted by both the States of Punjab and Haryana are contrary to the mandate of Section 3(3) of the Act of 1962, which clearly provides that period of time spent on parole shall not be a part of 'total sentence.' As such, the Executive has erred in devising the abovementioned formula by invoking rule making powers as well as clarificatory instructions. It is no longer *res integra* that any executive instructions or rules cannot be enforced, if they run contrary or inconsistent with the provisions of the Act. Such rules and

instructions rather deserve to be quashed as having no force of law. At this juncture, it would be profitable to refer to the judgment rendered by a Full Bench of Hon'ble Allahabad High Court in ***Vijay Singh***'s case (*supra*), where speaking through Justice Dr. B.S. Chauhan, held as follows:

> *"6.* ***It is settled legal proposition that executive instructions cannot override the statutory provisions*** *(vide B.N. Nagarajan v. State of Mysore, AIR 1966 SC 1942; Sant Ram Sharma v. State of Rajasthan, AIR 1967 SC 1910; Union of India v. MajjiJangamayya, AIR 1977 SC 757; B.N. Nagarajan v. State of Karnataka, AIR 1979 SC 1676; P.D. Aggarwal v. State of U.P., (1987)3 SCC 622 : (AIR 1987 SC 1676); M/s. BeoparSehayak (P) Ltd. v. Vishwa Nath, AIR 1987 SC 2111; State of Maharashtra v. Jagannath Achyut Karandikar, AIR 1989 SC 1133; PaluruRamkrishnaiah v. Union of India, AIR 1990 SC 166; Comptroller & Auditor General of India v. Mohan Lal Mehrotra, 1991(3) S.C.T. 581 : AIR 1991 SC 2288; State of Madhya Pradesh v. G.S. Dall & Flour Mills, AIR 1991 SC 772; Naga People's Movement of Human Rights v. Union of India, AIR 1998 SC 431; C. Rangaswamaeah v. Karnataka Lokayukta, 1998(3) R.C.R. (Criminal) 547 : AIR 1998 SC 2496.*
>
> *7.* ***Executive instructions cannot amend or supersede the statutory Rules or add something therein, nor the orders be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory rule nor does it have any force of law; while statutory Rules have full force of law provided the same are not in conflict with the provisions of the Act*** *(vide State of U.P. v. Babu Ram Upadhyaya, AIR 1961 SC 751; and State of Tamil Nadu v. M/s. Hind Stone, AIR 1981 SC 711).*
>
> *8. In Union of India v. Somasundaram Vishwanath, AIR 1988 SC 2255, the Hon'ble Apex Court observed that* ***if there is a conflict between the executive instruction and the Rules framed under the proviso to Article 309 of the Constitution, the Rules will prevail****.*

> ***Similarly, if there is a conflict in the Rules made under the proviso to Article 309 of the Constitution and the law, the law will prevail.***
>
> *9. Similar view has been reiterated in Union of India v. Rakesh Kumar, 2001(2) SCT 1085 (SC) : AIR 2001 SC 1877; Swapan Kumar Pal v. Samitabhar Chakraborty, 2001(2) SCT 1104 (SC) : AIR 2001 SC 2353; Khet Singh v. Union of India, 2002(2) R.C.R. (Criminal) 277 : (2002)4 SCC 380 : (AIR 2002 SC 1450); Laxminarayan R. Bhattad v. State of Maharashtra, 2003(2) R.C.R. (Civil) 819 : (2003)5 SCC 413 : (AIR 2003 SC 3502) and Delhi Development Authority v. Joginder S. Monga, (2004)2 SCC 297 : (AIR 2004 SC 3291), observing that statutory rules create enforceable rights which cannot be taken away by issuing executive instructions.*
>
> *10. In Ram Ganesh Tripathi v. State of U.P., 1997(1) SCT 494 (SC) : AIR 1997 SC 1446, the Hon'ble Supreme Court considered a similar controversy and held that* ***any executive instruction/order which runs counter to or is inconsistent with the statutory rules cannot be enforced, rather deserves to be quashed as having no force of law.*** *The Hon'ble Supreme Court observed as under (Para 9) :-*
>
> > *"They (respondents) relied upon the order passed by the State. This order also deserves to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents and similarly situated ad hoc appointees."*
>
> ***11. Thus, in view of the above, it is evident that executive instructions cannot be issued in contravention of the Rules framed under the proviso to Article 309 of the Constitution and statutory Rules cannot be set at naught by the executive fiat. ”***
>
> ***(emphasis added)***

32. Further, release on parole does not render the prisoner a free agent. Such release serves a specific purpose and is subject to conditions, under constant supervision of the concerned authority. A Constitution Bench of the

Hon'ble Supreme Court in ***Maru Ram Vs. Union of India, (1981) 1 SCC 107,*** speaking through Justice Krishna Iyer, opined as follows:

> *"71. ...Secondly, and more importantly, the expression 'prison' and 'imprisonment' must receive a wider connotation and include any place notified as such for detention purposes. 'Stone walls and iron bars do not a prison make'; nor are 'stone walls and iron bars' a sine qua non to make a jail. Open jails are capital instances. Any life under the control of the State, whether within the high-walled world or not, may be a prison if the law regards it as such. House detentions, for example. Palaces, where Gandhiji was detained, were prisons. Restraint on freedom under the prison law is the test.* ***Licensed releases where instant recapture is sanctioned by the law, and , likewise, parole, where the parole is no free agent, and other categories under the invisible fetters of the prison law may legitimately be regarded as imprisonment.*** *This point is necessary to be cleared even for computation of 14 years under Section 433A. Sections 432, 433 and 433A read together, lead to the inference we have drawn and liberal though guarded, use of this Act may do good..."*

33. Furthermore, a Constitution Bench of the Hon'ble Supreme Court in ***Sunil Fulchand Shah etc. Vs. Union of India, 2000 (2) RCR (Criminal) 176***, speaking through Justice A.S. Anand, the following was observed :-

> *"10. Bail and parole have different connotations in law. Bail is well understood in criminal jurisprudence and Chapter XXXII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bails to release the accused from internment though the Court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through*

the conditions of the bond secured from him. The literal meaning of the word 'Bail' is surety. In Halsbury's Laws of England, 4th Ed., Vol. 11, para 166, the following observations succinctly brings out the effect of bail

> *"The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned."*

11. 'Parole', however, has a different connotation than bail even though the substantial legal effect of both bail and parole may be the release of a person from detention or custody. The dictionary meaning of 'Parole' is:

> *THE CONCISE OXFORD DICTIONARY - NEW EDITION*
>
> *"The release of a prisoner temporarily for a special purpose or completely before the expiry of sentence, on the promise of good behaviour; such a promise, a word of honour.*
>
> *BLACK'S LAW DICTIONARY - SIXTH EDITION*
>
> *"Release from Jail, prison or other confinement after actually serving part of sentence; conditional release from imprisonment which entitles parolee to serve remainder of his term outside confines of an institution, if he satisfactorily*

complies with all terms and conditions provided in parole order."

According to The Law Lexicon, (P. Ramanatha Aiyar's The Law Lexicon with Legal Maxims, Latin Terms and Words & Phrases; p. 1410), 'parole' has been defined as :

> *"A parole is a form of condition pardon, by which the convict is released before the expiration of his term, to remain subject, during the remainder thereof, to supervision by the public authority and to return to imprisonment on violation of the condition of the parole."*

According to Words and Phrases (Permanent Edition); Vol. 31, pp. 164, 166, 167 :

> *'Parole' ameliorates punishment by permitting convict to serve sentence outside of prison walls, but parole does not interrupt sentence. People ex rel.* ***Rainonc v. Murphy, 135 N.E. 2D 567; 571, 1 N. Y, 2d 367, 153 N.Y.S. 21) 21, 26****.*
>
> *'Parole' does not vacate sentence imposed, but is mercy a conditional suspension of sentence.* ***Wooden v. Goheen, Ky., 255S.W. 2d 1000, 1002.***
>
> *"A 'Parole' is not a 'suspension of sentence,' but is a substitution, during continuance of parole, of lower grade of punishment by confinement in legal custody and under control of warden within specified prison bounds outside the prison, for confinement within the prison adjudged by the court.* ***Jenkins v. Madigan, C.A. Ind., 211 F.2d 904, 906.***
>
> *"A 'Parole' does not suspend or curtail the sentence originally imposed by the Court as contrasted with a commutation of sentence which actually modifies it."*

> *12. In this country, there are no statutory provisions dealing with the question of grant of parole. The Code of Criminal Procedure does not contain any provision for grant of parole. By administrative instructions, however, rules have been framed in various States, regulating the grant of parole. Thus, the action for grant of parole is generally speaking an administrative action. The distinction between grant of bail and parole has been clearly brought out in the judgment of this Court in State of Haryana v. Mohinder Singh, 2000 (1) RCR (Criminal) 627 : JT 2000 (1) SC 629, to which one of us (Wadhwa, J.) was a party. That distinction is explicit and I respectfully agree with that distinction.*
>
> *13. Thus, it is seen that 'parole' is a form of "temporary release" from custody, which does not suspend the sentence or the period of detention, but provides conditional release from custody and changes the mode of undergoing the sentence."*

34. The objective behind the Act of 1962 is humanitarian in nature. Temporary release ensures that the ties between the prisoner and the society are not severed. Ensuring that the incarcerated have healthy roots in the society greatly assists in their rehabilitation and reintegration. It also incentivizes the inmates to maintain good conduct while in custody, that aids the jail authorities in administration as well. Any relief granted to the accused under the Act of 1962 cannot be used to his detriment. The State cannot be allowed to provide something with one hand and take the same away with the other. The deduction of parole period from actual sentence, without any amendment in the Act of

1962 to that effect, would be wholly impermissible as it would defeat the very object of the Act of 1962.

35. In that context, the legislative intent can also be deciphered from the fact that a prisoner is allowed to earn remission while on parole, which indicates that he continues to stay in notional custody, making him bound by the fetters that come with it. Therefore, the parole period ought to be deducted while calculating the total sentence, where the remission earned is also considered. While for ordinary remission, the calendar month of readmission after parole does not count, there are multiple other avenues which allows for grant of remission even when one is on parole. Some instances enlisted in the Punjab Prison Rules, 2022 are reproduced below:

> ***"10.13 Annual good conduct remission.-***
>
> *Eligibility criteria for grant of annual good conduct remission shall be as follows:-*
>
> *(i) Any prisoner eligible for ordinary remission, who fola period of one year from the date of his sentence, or the date on which he was last punished (except by way of warning) for a prison offence, has not committed any prison offence, may be awarded fifteen days' 'annual good conduct remission' by the officer in charge of prison in addition to any other remission, on the recommendation of the Remission Committee.*
>
> *(ii) If, however, the prisoner completes three years of his sentence and is not punished for any prison offence, he shall be granted sixty days' remission for good conduct at the end of the third year.*
>
> ***10.14 Procedure in making award.-***
>
> *Following procedure shall be followed for awarding ordinary remission, namely:-*

(i) The award of ordinary remission shall be made on quarterly basis by the officer in charge of prison who, before making the award, shall consult the prisoner's history ticket in which detailed comments on his monthly performance in work and conduct shall be recorded by the Assistant Superintendent in charge of the block and Deputy Superintendent (Administration). The remission recommended shall be closely scrutinized by the officer in charge of prison before sanction.

(ii) If a prisoner has not been punished during the quarter otherwise than by a formal warning, he shall be awarded full ordinary remission for the quarter under rule 10.08.

(iii) If a prisoner has been punished during the previous quarter, otherwise than by a formal warning, the case shall be placed before the officer in charge of prison, who after considering the punishments) awarded, shall decide what amount of remission shall be granted under rule 10.08. All remissions recorded on the prisoner's history ticket shall be entered quarterly on the remission sheet (or card).

10.15 Remission to be awarded quarterly.-

The award of ordinary remission shall be made, as nearly as possible, on 1st January, Ist April, 1st July and Ist October, and the amount shall be intimated to the prisoner and recorded on his history ticket. Remission granted to a prisoner shall be recorded on his history ticket as soon as possible after it is awarded.

10.16 Remission for the month in which released. –

No prisoner shall receive ordinary remission for the calendar month in which he is released on bail or for parole.

10.17 Remission to prisoners transferred from other States.-

Remission shall be awarded to the prisoners who have been transferred to serve their sentence from other states in accordance with the remission rules of the punishing states.

10.18 Remission to prisoners sentenced under court martial.-

Remission to prisoners sentenced under court martial from Indian armed forces shall be awarded only in the list of orders of the Ministry of Home Affairs, Government of India.

10.19 Special remission.

(1) In addition to the ordinary remission and annual good conduct remission, to create a spirit of healthy competition among the prisoners, special remission may be granted by officer in charge of prison or by the Head of Department, on the recommendation of Remission Committee, to any prisoner, whether eligible for ordinary remission or not. on the following considerations, namely:-

(i) protecting a Government employee, prison visitor, or inmate from physical violence or danger:

(ii) preventing or assisting in prevention of escape of prisoner(s), apprehending prisoners attempting to escape, or giving material information about any plan or attempt by a prisoner or a group of prisoners to escape.

(iii) assisting prison officials in handling emergencies like fire, outbreak of riots and strike:

(iv) assisting prison administration in maintaining discipline and detecting and preventing serious breach of prison regulations or discipline:

(v) outstanding contribution in cultural activities, sports, education or vocational training or for excellent work done in the prison kitchen or hospital:

(vi) outstanding work in prison factories which may include innovative practices or using any special skills, especially good work in industry. agriculture or any other work programme; and

(vii) assistance to the Prison and Correctional Services Department in its drive to improve the educational standards of prisoners, such as imparting education or vocational training to prisoners as resource person. or for excellent work done in managing prison farm or garden.

(2) Special remission may be awarded.-

(i) by the officer in charge of prison for a period not exceeding thirty days in one year; and

(ii) by the Head of Department for a period not exceeding sixty days in one year.

***Explanation**: For the purpose of this rule, a year shall be reckoned from the date of sentence and any fraction of a year shall be reckoned as a complete year.*

(3) Special Remission may also be awarded to any prisoner released under the Good Conduct Prisoners, Probational Release Act, 1926 by the Deputy Inspector General (Circle) for a period not exceeding thirty days in one year, on the recommendations of the District Probation Officer, for special services such as:-

(i) special excellence in, or greatly increased out-turn of good quality; or

(ii) assisting the employer in case of outbreak of fire, or protecting his life or property from theft and other meritorious services.

(4) An award of special remission shall be entered on the history ticket of the prisoner as soon as possible after it is made, and the reasons for every award of special remission by the officer in charge of prison shall briefly be recorded.

NOTE: Convicts not eligible for Government remission as per the remission policy shall, however, be eligible for special remission earned for their good conduct, while in prison custody, except for those convicted under the Narcotic Drugs and Psychotropic Substances Act, 1985.

10.20 Government Remission.-

Procedure for grant of Government Remission shall be as follows:-

(i) Remission granted by the Government shall be called Government Remission.

(ii) The Government remission can be awarded to such prisoners or categories of prisoners as the Government may decide.

(iii) In the case of prisoners who at the time of general grant of Government Remission are on temporary or emergency

release, specific order of the Government for the award of this remission to such prisoners are necessary.

(iv) Government remission shall be granted at such scale or such quantum as may be fixed by the Government from time to time.

(v) Maximum limit of ordinary and special remission which a prisoner can carn shall not be more than one-fourth/25% of a substantive sentence (to be calculated from the date of his conviction). The remission granted by the Head of the State shall be in addition to the ordinary and special remissions which the prisoner has earned. However, under no circumstances, the maximum limit of all types of remissions earned by a prisoner shall exceed one-third/33.33% of the substantive sentence.

10.21 Remission in calculating date of release.-

In calculating the date of release of a prisoner, the number of days of remission earned shall be converted into months and days at the rate of thirty days to each month.

Note 1: *If the sentence of a prisoner is amended by the appellate court, the remission already earned shall be adjusted as per new sentence.*

Note 2: *If the sentence of a prisoner is amended by the appellate court leading to conviction(s) under sections of law under which remission is barred, the remission already earned shall be forfeited.*

36. The prisoner must spend the time stipulated as ‘actual sentence’ by the policy in order to be eligible for premature release. Even if one avails multiple paroles, the minimum benchmark of actual custody set out in the policy will have to be met in all cases. Alterations or corrections, if any, ought to be made to the ‘total sentence’ by adding remission and subtracting concessions like

parole. The provision of Section 3(3) of the Act of 1962 leaves no room for any ambiguity in this regard.

37. The emphatic reliance placed by learned State counsel on the judgment rendered by a two Judge Bench of the Hon'ble Supreme Court ***Rohan Dungat***'s case (*supra*) is totally misplaced as it deals with interpretation of Rule 335 of the Goa Prisons Rules, 2006, which provides that period of release on furlough and parole shall be counted as remission of sentence. The facts and the Rules dealt with therein are clearly distinguishable from the matter at hand. A three Judges Bench of the Hon'ble Supreme Court in ***Avtar Singh Vs. State of Haryana, 2002 SCC (Cri.) 504*** had the occasion to look into the provisions contained in Section 3(3) of the Act of 1988, which is identical to Section 3(3) of the Act of 1962 and also, whether parole needs to be counted towards total period of sentence. The matter was referred to a Larger Bench with the following observations: -

> *"4. When both the appeal and the writ petition came before a Bench of this Court, these were referred to a larger Bench with the following observations :*
>
> > *"In the writ petition Section 3(iii) of the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 is challenged on the ground that it is violative of Article 14 and Article 21. In* ***State of Haryana v. Mohinder Singh, 2000(1) RCR (Criminal) 627 (SC) : 2000(3) SCC 394*** *and the Constitution Bench in* ***Sunil Fulchand Shah v. Union of India and others, 2000(2) RCR (Criminal) 176 : 2000(3) SCC 409****, this Court held that parole and furlough period can also be counted as the period of sentence of imprisonment. But in those*

decisions the question of validity of the impugned sub-section of the Act mentioned above has not been considered. When the constitutional validity of the said sub-section is challenged and the focus is made on Article 21, we are of the opinion that this must be heard by a larger Bench. Registry will place this matter for orders of the Hon'ble the Chief Justice of India."

xxx xxx xxx

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

8. Two points have been urged by the learned counsel for the appellant. Firstly, is submitted that since the Constitution Bench of this Court in ***Sunil Fulchand Shah v. Union of India and others, 2000(2) RCR (Criminal) 176 (SC) : 2000(3) SCC 409*** *has held that the period of parole can also be counted as a period of sentence of the imprisonment, sub-section (3) of Section 3 of the Act is unconstitutional and violative of Article 21 of the Constitution. Secondly, it has been contended that sub-section (3) of Section 3 of the Act is discriminatory inasmuch as a prisoner released temporarily under Section 3 shall not be entitled to count such period of release towards the total period of sentence, whereas temporary release of a prisoner under Section 4 such temporary period of release on furlough would be counted towards the total period of sentence.*

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

the period of detention, but provides conditional release from the custody and changes the mode of undergoing the sentence. However, in paragraph 30 of the judgment the above position of parole was further clarified as follows :

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

10. In the same paragraph the Bench also held that "...the period of detention would not stand automatically extend by any period of parole granted to the detenu unless the order of parole or rules or instructions specifically indicates as a term and condition of parole to the contrary". (emphasis ours)

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

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

13. Under Section 3 of the Act, the State Government can temporarily release a prisoner for a specified period if the Government is satisfied that (i) any member of his family had died or seriously ill or the prisoner himself is seriously ill or (ii) marriage of himself, his son, daughter, etc. is to be celebrated or (iii) such release is necessary for ploughing, sowing or harvesting or carrying on any other agricultural

operation on his land or his father's undivided land actually in possession of the prisoner or (iv) is desirable to do so for any other sufficient cause. The period of release is to be determined by the State Government in accordance with sub-section (2) and sub-section (3) provides that period of release under this section shall not be counted towards the total period of sentence of prisoner. Under Section 4 a prisoner who has been sentenced to a term of imprisonment of not less than 4 years cannot be temporarily released on furlough unless he has undergone continuous imprisonment for a period of 3 years and has not committed any jail offence (except an offence punished by a warning) and has also earned at least three annual good conduct remissions. This section also provides that the benefit of furlough cannot be granted to the class of prisoners mentioned in proviso to sub-section (1). The period of such temporary release has been fixed in sub-section (2). It is specifically provided in sub-section (3) that period of temporary release on furlough shall be counted towards total period of sentence undergone by a prisoner.

14. Thus, the legislature for the purpose of temporary release has created two classes of prisoners. If we compare these two sections, we find that conditions of temporary release on furlough under Section 4 is more rigorous and a prisoner shall not be entitled to such temporary release unless he fulfills the conditions laid down in the said section. But in Section 3 no such rigorous condition has been imposed and only the circumstances under which the temporary release can be granted have been stated. Moreover certain classes of prisoners cannot get the benefit of furlough.

xxx xxx xxx

18. The second contention of the learned counsel for the appellant has also to be rejected in view of the decision of this Court in Sunil Fulchand Shah (supra). The Constitution Bench has clearly held that though ordinarily the period of temporary release of a prisoner on parole needs to be counted towards the

> *total period of detention but this condition can be curtailed by legislative act, rules, instructions or terms of grant of parole."*

38. In view of the ratio of law laid down in **Avtar Singh'**s case (*supra*), wherein reference has been made to the majority view of the Constitution Bench in ***Sunil Fulchand Shah***'s case *(supra)*, it can be safely concluded that ordinarily, the period of temporary release needs to be counted towards the total period of sentence, but this condition can be curtailed by the legislative action by enacting laws and issuance of Rules, Instructions etc. for grant of parole. As such, the Hon'ble Supreme Court in ***Avtar Singh***'s case *(supra)* and ***Sunil Fulchand Shah***'s case *(supra)* has culled out the principle that the deduction of period of parole from the sentence is permissible by way of a legislative action enacted for this specific purpose.

39. Indubitably, in this context, a specific legislation already exists by means of Section 3(3) of Act of 1962. The said provision explicitly provides that the period of parole shall not be counted towards the total sentence. As such, by merely using the rule making power, or issuing clarifications, without amending the parent Act, the deduction of the period of parole from actual sentence cannot be held to be legally binding. The provisions of Act of 1962 will naturally prevail over the Rules and any clarificatory instructions. Since Section 3(3) of Act of 1962 still occupies the field, it would override and prevail over any deviations made by the means of any Rules or instructions.

CONCLUSION

40. It goes unsaid that reformation and deterrence, especially in cases as severe as murder, must go hand in hand. It is mandatory to meet the minimum benchmark for actual sentence, in terms of the applicable policy, by serving that period in the prison. Thus, the time spent on parole shall be deducted from the total sentence, as it also includes remissions earned during that period.

41. In view of the discussion above, this Court does not find merit in the arguments put forth by learned State counsel/applicant. Accordingly, present review application is dismissed and the criminal writ petition is allowed, in the following terms:

(i) The formula prescribed in meeting dated 16.07.2020 is held to be invalid, being in direct contravention of Section 3(3) of the Act of 1962.

(ii) It is directed that the parole period shall only be subtracted from the total sentence and not from the actual sentence. Actual sentence shall only mean the real time spent by a prisoner in the prison premises.

(iii) The order dated 30.10.2024 (Annexure P-3) passed by respondent No.1 is hereby set aside. Respondent No.1 is directed to reassess the case of the petitioner by subtracting the parole availed by him from the total sentence and not from the actual sentence within a period of four weeks from the date of receipt of certified copy of this order.

42. A copy of this order be provided to learned State counsel, for information and compliance.

[HARPREET SINGH BRAR]
JUDGE

29.05.2025
vishnu