

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(Crl.) 873/2010 & CrI.M.A. 7445/2010

% Reserved on: 16th February, 2012

Decided on: 5th March, 2012

Sikander Mohd. Sahfi

..... Petitioner

Through: Mr.K.K. Sud, Sr. Adv. with Mr.
Jayant K. Sud & Mr. Harender Singh,
Advs.

versus

State NCT of Delhi & Others

..... Respondents

Through: Mr. Dayan Krishnan, ASC for the
State with Inspector Vinod Kumar,
P.S. Chandni Mahal.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition, the Petitioner seeks direction to Respondent No.1 to expeditiously place the case of the Petitioner before the Sentence Reviewing Board (in short 'SRB') with direction to dispose of the same within fortnight.

2. Learned counsel for the Petitioner contends that the Petitioner was convicted for offence under Section 302 IPC vide judgment dated 5th August, 1991. The Petitioner was awarded death sentence by the learned Additional Sessions Judge and the reference for confirmation of death sentence was sent to this Court. This Court answered the reference in negative and thus on 28th May, 1992 the Petitioner was awarded life sentence. Special Leave Petition filed by the Petitioner was dismissed by the Hon'ble Supreme Court on 6th

April, 1999. On 12th July, 2000, the Government of NCT brought out a Notification framing the guidelines for premature release under Section 433A Cr.P.C. by the SRB, Delhi. This Notification was further reviewed on 5th March, 2004. The Notification dated 5th March, 2004 was thereafter reviewed on 16th July, 2004.

3. The Petitioner earlier filed a writ petition being WP(Crl.) No.1324/2009 before this Court seeking reference of his name to the SRB for grant of premature release, which petition was disposed of vide order dated 18th December, 2009 by this Court directing that the writ petition be treated as representation and disposed of within a period of four weeks in terms of the Sentence Reviewing Board Guidelines issued by Government of NCT of Delhi. On 25th January, 2010, the Superintendent, Central Jail No.2, Tihar wrote back that the Petitioner was not eligible for premature release. As per the letter of the Superintendent, Central Jail No.2, Tihar it was noted that according to clause 3.1(a) & (c), the convict who have been imprisoned for life in heinous crimes such as multiple murder etc. and convict whose death sentence has been commuted to life imprisonment would be eligible for premature release after completing 20 years of imprisonment with remission. The Petitioner having completed actual imprisonment of 14 years, 7 months and 11 days of actual imprisonment and with remission total imprisonment of 16 years, 9 months and 16 days was thus not eligible for consideration by the SRB of Delhi.

4. Learned counsel for the Petitioner states that the view of the Superintendent, Central Jail 2, Tihar that the death sentence was commuted is illegal as no death sentence was awarded to the Petitioner. Learned

Additional Sessions Judge had only pronounced the death sentence, however, the same was subject to the confirmation by this Court. Since this Court did not confirm the said death sentence, it cannot be said that the Petitioner was awarded the death sentence. Further relying upon *State of Haryana and Others v. Jagdish*, (2010) 4 SCC 216 it is contended that the policy at the time of conviction of the prisoner has to be considered while granting remission and if in the meantime some beneficial legislation comes, the benefit of the same should also be extended to him. According to learned counsel, the decision of Respondent No.1 in holding that the Petitioner was not eligible for consideration by the SRB was illegal and liable to be set aside.

5. Learned Additional Standing Counsel for the State on the other side contends that in the year 1991, the cases of life convicts used to be placed before the SRB for consideration of the premature release as per para 91 of Chapter III of “Admission and Release of the Prisoners of Delhi Jail Manual” which provided that the case of a prisoner shall be placed for consideration not less than six months before the expiry of completion of 14 years of imprisonment of a prisoner convicted on or after 18th December, 1978 for an offence punishable for death for a reference to the Administration for permission to release the prisoner on completion of 14 years of imprisonment with remission. The Petitioner was convicted in the year 1991 and his 14 years actual imprisonment completed in the year 2009. However, by that time, the guidelines dated 16th July, 2004 came into force and the subsequent guidelines being more beneficial than the provisions of the Delhi Jail Manual, the case of the Petitioner was considered in

accordance thereto. The contention of learned Additional Standing Counsel is that as per the Delhi Jail Manual, a person, who had been awarded life imprisonment for an offence for which death was one of the punishments, was eligible to be considered on completion of 14 years of actual imprisonment by the SRB. However, there was no cap provided by virtue of which he was bound to be released after having undergone a particular period. In the guidelines of 2004, two categories were carved out of the persons serving sentence of life. As per the first category, convicts, who are convicted for offence of murder, were to be considered for release on completion of 14 years imprisonment and in no case the same was to extend beyond 20 years with remission. In other category, which related to persons involved in heinous crimes such as murder with rape, murder with dacoity, multiple murder, convict's case for premature release was to be considered on his completion of imprisonment for 20 years including remission with an outer limit of 25 years with remission being the maximum period of incarceration. According to the State, since the subsequent policy was beneficial as it had an outer limit which was not provided in 1991 Delhi Jail Manual, the case of the Petitioner was not sent for consideration at that stage in terms of Delhi Jail Manual. However, since the Petitioner has now spent more than 19 years of imprisonment with remission, his case has been sent for consideration before the SRB.

6. I have heard learned counsel for the parties.

7. Briefly the facts of the case are that the Petitioner was convicted vide judgment dated 9th August, 1991 in case FIR No. 197/88 under Section 302 IPC registered at P.S. Chandni Mahal. The learned Additional Sessions

Judge passed the sentence of death, which was not confirmed by the High Court and thus the sentence of life imprisonment was awarded to the Petitioner vide judgment dated 28th May, 1992 in CrI. Appeal No.109/91 and Murder Reference No.3 of 1992. The Petitioner was arrested on 17th October, 1988 and remained in custody till 25th September, 1994. He was granted bail by the Hon'ble Supreme Court vide order dated 30th September, 1994. After dismissal of the SLP, he was again admitted to jail on 16th June, 1999. This Court granted parole to the Petitioner for a period of one month from 5th April, 2002 to 5th May, 2002. However, the Petitioner jumped the parole with effect from 6th May, 2002 and was rearrested on 8th April, 2004 in another case being FIR No.256/2004 under Sections 328/342/363/376 IPC registered at P.S. Shakarpur. As on 22nd June, 2011 the Petitioner had served 15 years, 11 months and 20 days of his sentence. The total period along with remission was 18 years, 10 months and 23 days. The case of the Petitioner was not placed before the SRB and thus, the Petitioner filed WP(CrI.) 1374/2009, which was disposed of by this Court vide order dated 18th December, 2009 with directions to treat the writ petition as a representation and consider the case of the Petitioner for placing before the SRB. In response thereto, an order dated 25th January, 2010 was communicated to the Petitioner by the Superintendent, Tihar Jail according to which by that time the Petitioner had completed 14 years, 7 months and 11 days of actual imprisonment and 16 years, 9 months and 16 days with remissions. It was stated that in view of the fact that the case of the Petitioner belonged to 3.1(a) & (c) i.e. he was awarded life sentence in a heinous crime such as multiple murders and was a convict whose death sentence was commuted to

life, he would be eligible for premature release after 20 years of imprisonment with remission. Thus, the Petitioner filed the present petition.

8. On filing of the present petition, reply affidavits have been filed and learned Additional Standing Counsel states that the case of the Petitioner has been placed before the SRB. Though it was the contention that nothing further survives in the present petition, however, two issues still need consideration i.e. (i) whether the Petitioner is a convict whose death sentence has been commuted and (ii) whether the provisions of the Delhi Jail Manual as applicable in the year 1991 when the Petitioner was convicted or guidelines dated 5th March, 2004, which were subsequently revised on 16th July, 2004, would be applicable to the Petitioner.

9. At the outset, it may be noted that the finding of the Superintendent, Tihar Jail and contention of Respondent No.1 that the Petitioner is a convict whose death sentence has been commuted to life is incorrect. A death sentence cannot be awarded by the Sessions Judge and the same is awarded only on confirmation in a reference by the High Court under Sections 366 Cr.P.C. In the present case, the death sentence pronounced for the Petitioner by the Additional Sessions Judge having not been confirmed by the High Court, it cannot be said that the death sentence was awarded to the Petitioner, which was commuted to life. As a matter of fact, in the absence of confirmation by this Court, no death sentence was awarded on the Petitioner.

10. Before proceeding with the matter, it would be appropriate to reproduce the relevant provisions of Delhi Jail Manual and Guidelines dated 16th July, 2004. The relevant provision of the Delhi Jail Manual reads as under:-

“Release of convicts after 14 years of imprisonment

91.(1) Not less than six months before the expiry of completion of 14 years of substantive imprisonment of a prisoner convicted on and after 18th December, 1978 an offence punishable also by death, Superintendent shall make a reference to Administrator for permission to release the prisoner on completion of 14 years of substantive imprisonment.”

The relevant portions of the Guidelines dated 16th July, 2004, read as under:-

3. Subject to the provision of Section 433 A of the Code of Civil Procedure, 1973 and Notification No.U-11011/2/74/-UTL(I) dt. 20.03.74 of the Govt. of India Ministry of Home Affairs, the following categories of convicted Prisoners shall be eligible to be considered for premature release by the Board:-

Eligibility for premature release

- 3.1 Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433 A Cr.P.C. shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment i.e. without the remissions. It is, however, clarified that completion of 14 years in prison by itself would not entitle a convict to automatic release from the prison and the Sentence Review Board shall have the discretion to release a convict, at an appropriate time in all cases considering the circumstances in which the crime was committed and other relevant factors like:

- (a) whether the convict has lost his potential for committing crime considering his overall conduct in jail during the 14 years of incarceration.
- (b) The possibility of reclaiming the convict as a useful member of the society; and
- (c) Socio-economic condition of the convict's family

Such convict as stands convicted of a capital offence are prescribed the total period of imprisonment to be undergone including remission, subject to a minimum of 14 years of actual imprisonment before the convict prisoner is released. Total period of incarceration including remission in such cases should ordinarily not exceed 20 years.

Certain categories of convicted prisoners undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 years including remissions. The period of incarceration inclusive of remissions even in such cases should not exceed 25 years. Following categories are mentioned in this connection.

- a) Convicts who have been imprisoned for life for murder in heinous Crimes such as murder with rape, murder with dacoity, murder involving the offence under the Protection of Civil Rights Act, 1955, murder for dowry, murder of a child below 14 years of age, multiple murders, murder committed after conviction while inside the jail, murder during parole, murder in a terrorist incident, murder in smuggling operation, murder of a public servant on duty.
- b) Gangsters, contract killers, smugglers, drug traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-meditation and with exceptional violence and perversity.
- c) Convicts whose death sentence has been commuted to life imprisonment.”

11. As regards the second contention though learned counsel for the Petitioner has strenuously contended that the Petitioner is eligible in terms of guidelines of 2000, according to which there was no distinction between the two categories of prisoners. However, the said contention is fallacious in view of the law laid down by the Hon'ble Supreme Court in *State of Haryana and others (supra)*, which states:-

“54. The 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 premature 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 “lifer” for premature release, he should be given benefit thereof.”

12. Thus, the policy for remission applicable to the Petitioner would be the one which was in vogue on the date of his conviction i.e. Delhi Jail Manual. However, it may be noted that when the Petitioner completed his 14 years actual imprisonment i.e. in the year 2009, the policy in vogue was the guidelines as notified on 16th July, 2004. The guidelines notified on 16th July, 2004 provide for an outer limit of imprisonment which is absent in the

1991 Delhi Jail Manual and are more beneficial in the case of the Petitioner, though in other cases, 1991 Delhi Jail Manual may be more beneficial. It may be noted that the Petitioner besides being involved in multiple murders has also jumped the parole. While considering the case before the SRB, some of the factors to be considered are the nature and gravity of the offence and whether the prisoner has misused the concessions of bail or parole granted to him besides other considerations. Thus, in view of these peculiar facts in the present case, the guidelines invoked i.e. of the year 2004 are more beneficial to the Petitioner according to which on completion of 20 years with remission, the case of the Petitioner would be put up before the SRB and the Petitioner can be kept in the prison for a maximum period of 25 years including remission.

13. A latest nominal role of the Petitioner has been filed. As per the nominal roll as on 11th January, 2012, the Petitioner has undergone 20 years, 10 months and 26 days imprisonment. The case of the Petitioner has already been put up for consideration and thus, the same will be considered by the SRB keeping in view the criterion laid down i.e. whether the offence was an individual act of crime without affecting the society at large; whether there is any chance of future recurrence of committing a crime; whether the convict

has lost his potentiality in committing the crime; whether there is any fruitful purpose of confining the convict anymore; the socio-economic condition of the convict's family and other similar circumstances.

14. The petition and the application are disposed of accordingly.

(MUKTA GUPTA)
JUDGE

MARCH 05, 2012
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