



\$~11

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 10.05.2022

+

W.P.(CRL) 378/2021 & CRL.M.(BAIL) 188/2021, CRL.M.A.
2749/2021

RAKESH SARAHA

..... Petitioner

Through: Ms. Geeta Luthra, Sr. Adv. with Ms.
Asmita Narula, Ms. Apoorva Maheshwari,
Advocates

versus

UNION OF INDIA & ORS.

..... Respondent

Through: Mr. Satya Ranjan Swain, Mr.
Kautilya Birat, Mr. Pratyasish Mohanty, Advs.
Ms. Jyoti Babbar, Mr. Ranjeeb Bora, Advs. for
Mr. Rajesh Mahajan, Ld. ASC
Mr. Mankaran Singh, Mr. Anil Grover, SPP, CBI

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

:

JASMEET SINGH, J (ORAL)

1. The present Petition has been filed by the Petitioner/Lifer seeking the following reliefs:

- a) *Pass an appropriate writ/direction of certiorari, directing the appropriate authority to release the Petitioner/lifer immediately from its illegal detention/custody;*
- b) *Pass an appropriate writ/direction setting aside the impugned letter/notice and/or Memorandum dated 25.11.2020 bearing No. 15/8/2020-Judl.Cell-II of the Ministry of Home Affairs, Govt. of India/Respondent No. 1 rejecting the proposal of the Government of NCT of Delhi for the premature release of the Petitioner herein*
- c) *.....*



2. The brief facts of the case are such that the Petitioner, a Lifer, in this case was accused of kidnapping one Mr. Thekkat Siddique for a ransom., a permanent resident of Calicut, Kerala, who in the year 2001 was living in Abu Dhabi, UAE, Mr. Siddique, in this case, was later rescued from captivity of his abductors, in an operation conducted by a joint team of CBI and Special Cell of Delhi Police, on 18th March, 2001 and the perpetrators including the present Petitioner and the Petitioner in W.P. (Crl.) 1642 of 2020 i.e., Kartik Subramaniam were arrested.
3. The Sessions Court, Delhi in RC No. SIB/2001-E-0004, P.S. CBI, New Delhi vide its common judgment dated 18.03.2005 convicted the Petitioner along with his co-accused u/s 364A/365/368/324/506 & 120-B of IPC and they were sentenced by an order dated 19.03.2005 to imprisonment for life along with a fine of Rs.14,000. The Judgment of the Trial Court was impugned before this Court vide Criminal Appeal No. 355/2005 whereby a Division Bench of this court, on 14.12.2007, partly allowed the appeal and set aside the conviction u/s 365, 368, 324 and 506 IPC and upheld the conviction u/s 364A r/w 120B IPC along with the Order on Sentencing under the said provision.
4. It is the case of the Petitioner that he has been languishing in jail since 26.03.2001 and that his case, under the Government of NCT of Delhi, Home (General) Department's Order No. F.18/5/94 Home (General) dated 16.07.2004 (hereinafter referred to as the '2004 Policy'), for premature release was considered by the Sentence Reviewing Board (hereinafter referred to as 'SRB') in its meeting held on 06.01.2016 in terms of its Guidelines and the Order of the Hon'ble Supreme Court



vide its Order dated 02.12.2015.

5. The case of Petitioner's premature release was recommended and was met with the approval of the Hon'ble Lt. Governor, Delhi considering his overall conduct in the jail and recommendation of Chief Probation Officer, subject to the concurrence of the Central Government. The recommendation of the SRB vide Letter No. F.18/102/2003/HG/PT-2016-III/022 dated 29.02.2016 was met with objection by the CBI, Delhi Police and the Ld. Additional Session Judge, Delhi, the Central Government and was intimated by the Ministry of Home Affairs, Government of India to the Jail Superintendent, Central Jail No. 2, Tihar Jail, Delhi vide letter No. F.1 8/ 102/2003-HO:ME (G)/Pt-201 6-III/3889 dated 21.07.2016.
6. The case of the Petitioner was again recommended by SRB on 06.09.2017 but thereafter rejected on 04.10.2018. On 28.02.2020, the Petitioner was again recommended for pre-mature release by SRB. Vide impugned letter dated 25.11.2020, the MHA rejected the recommendation of the SRB for premature release of the Petitioner. This rejection has been challenged before me.
7. One of the grounds for the case of pre-mature release of the Petitioner was that he is claiming parity with his co-accused in W.P. (Crl.) No. 1642 of 2020 titled '*Kartik Subramaniam v. Union of India*' wherein the Petitioner was granted relief of pre-mature release by this Court.
8. It is also an admitted case between the petitioner and the learned counsel appearing for the respondent No.1 that the facts of the present case are identical to W.P. (Crl.) No. 1642/2020 titled '*Kartik Subramaniam vs. Union of India*'. In W.P. (Crl.) No. 1642/2020, the



Coordinate Bench of this Court held that the decision of the Central Government to not concur with the recommendations of the Sentence Reviewing Board (hereinafter called as SRB) for premature release of the petitioner, was arbitrary and without considering relevant factors.

9. The Coordinate Bench of this Court further, while setting aside the impugned order, directed the respondent to process the petitioner's premature release in terms of the recommendations of the SRB as approved by the Lieutenant Governor of Delhi.
10. In the present case as well, the recommendations of the SRB are dated 28.02.2020 held as under:-

*“After taking into account all the facts and circumstances of the case i.e. convict has shown good aptitude for reforms, family responsibilities, learnt/ perform work in Bakery Unit at Jail Factory, satisfactory conduct in the jail as well as during parole/ furlough and the fact that on earlier 03 occasions SRB has already recommended the case of the convict for premature release, although concurrence was not received from CBI/ MHA, Govt. of India for premature release, the Board again unanimously **RECOMMENDS** premature release of convict Rakesh Saraha S/o Sh. Raghubir Singh **subject to consultation with Central Government (CBI/MHA), in view of section 435 of Cr.P.C., 1973.**”*

11. With the counter affidavit filed by the respondent No.1, Mr. Swain, learned counsel for the respondent No.1 has drawn my attention to letter dated 02.11.2020 from office of Deputy Inspector General of Police, CBI, wherein it has categorically been stated that the Hon'ble LG on 03.04.2020 has also recommended for premature release of 10 life convicts including the petitioner herein.



12. The judgment of 25.01.2021 passed in W.P. (CrI.) No. 1642/2020 *Kartik Subramaniam* has not been challenged.
13. The decision of the Central Government dated 25.11.2020 not to concur with the recommendations of the SRB for premature release of the petitioner has not considered any of the relevant factors and neither gives any reasons for rejection of the recommendations of the SRB.
14. The Coordinate Bench of this Court has already dealt in detail with this issue as under:

“41. The decision of the Central Government to not concur with the recommendation for the premature release of the petitioner must be examined in the context of the petitioner's right to be so considered. As noticed above, the appropriate government has the power to suspend or remit the sentence under Section 432 of the Cr.PC and to commute the sentence under Section 433 of the Cr.PC.

43. However, it is implicit that the said consent cannot be arbitrary or unreasonably withheld. It is well settled that all State actions must be informed by reasons and cannot be arbitrary. Considering that such decisions of the Central Government concern the right to life and liberty, it is imperative that such a decision also stand the test of reasonableness on the anvil of Article 14 of the Constitution of India.

47. Plainly, in view of the above, the impugned orders passed by the Central Government must be informed by reason. In cases where the Central Government declines its consent, it must be on consideration of relevant factors. Ms. Farasat had earnestly contended that the Guidelines issued by the Government of NCT of Delhi for the SRB to make recommendations for the premature release of the prisoners undergoing life sentence would be binding on the Central Government. Undeniably, the



considerations referred to in the said Guidelines are relevant for the purposes of deciding whether an eligible prisoner ought to be released prematurely. The said Guidelines also have the imprimatur of the National Human Rights Commission as is apparent from the opening paragraph of the Order dated 16.07.2004 issued by the Government of NCT of Delhi (SRB Guidelines), which provides for constitution of the SRB and embodies the scheme for remission of sentences.

48. In terms of the SRB Guidelines, every convicted prisoner, who is sentenced to life imprisonment and is covered under the provisions of Section 433-A of the Cr.PC, would be eligible for being considered for premature release from prison immediately after serving sentence of fourteen years of actual imprisonment (without remission) and the SRB would take an appropriate decision in this regard after considering "the circumstances in which the crime was committed and other relevant factors such as: (a) whether the convict has lost his potential for committing crime considering his overall conduct in jail during the 14-year 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.

63. In the given facts and circumstances of the case, the recommendation of the SRB for premature release of the petitioner is a well-considered one and unless there is any relevant reason to dissent from the same, the same is ought to be accepted.

64. In this case, the impugned orders declining to consent for a premature release of the petitioner are unreasoned. In the impugned order dated 26.05.2016, the Central Government had stated that it did not consider the petitioner's case to be a fit case for according concurrence as the petitioner's premature release



had been objected to by the CBI as well as the learned Additional Sessions Judge, who was a part of the SRB. As stated above, SRB had recommended the petitioner's release on three occasions thereafter. However, the CBI/police opposed the petitioner's release.

70. In view of the above, it is clear that the decision of the Central Government, to not concur with the recommendations of the SRB for premature release of the petitioner, is arbitrary and without considering any relevant factors. It is without application of mind and is not informed by reasons. Plainly, the impugned orders cannot be sustained.”

15. Following the same reasons and on account of parity of reasoning, the respondents are directed to forthwith release the petitioner expeditiously in terms of recommendations of the SRB as approved by the learned LG of Delhi. The parole granted to the petitioner on 22.02.2021 shall continue till his official release.
16. The petition is disposed of.

MAY 10, 2022 / (MS)

JASMEET SINGH, J

[Click here to check corrigendum, if any](#)