



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

% *Date of decision: November 02, 2023.*

+ **W.P.(CRL) 2589/2023 & CRL.M.A. 28433/2023**

HARI SINGH

..... Petitioner

Through: Mr. Sidharth Aggarwal, Sr. Adv.
with Ms. Gunjan Sinha Jain,
Advocate, (DHCLSC), Mr.
Vishwajeet Singh Bhati, Mr. Ayush
Srivastava and Ms. Rudrali Patil,
Advocates.

Versus

STATE OF NCT OF DELHI & ORS.

.... Respondents

Through: Ms. Rupali Bandhopadhyaya, ASC
for the State and Mr. Akshay
Kumar, Mr. Abhijeet Kumar,
Advocates with SI Rajesh Kumar,
PS. Domestic Airport.

CORAM:

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

1. The present writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 [Cr.P.C.] has been filed by the petitioner seeking issuance of a writ of certiorari or any other writ, order or direction thereby setting aside Order F.18/102/2003-HOME(G)/Pt-V/2021/1709-1710 dated 22.11.2021 of the Deputy Secretary (Home) according to minutes of meeting of Sentence Review Board [SRB] held on 27.08.2021, rejecting the premature release of the petitioner and to release the petitioner forthwith.



2. The petitioner herein is undergoing sentence of life imprisonment in case FIR No.07/1993 registered under Section 4 of the Anti Hijacking Act, 1982 read with Sections 353/365/506(II) IPC, PS Palam Airport, Delhi being convicted vide order dated 30.07.2001 in SC No.106/1993 passed by the learned Additional Sessions Judge, Patiala House Courts, New Delhi. The appeal being CRL.A. 598/2001 filed by the petitioner against the said conviction was dismissed by this Court on 29.03.2011.

3. Learned senior counsel for the petitioner submits that the petitioner is in judicial custody since 08.04.1993 i.e. for more than 16 years in actual and more than about 19 years and 10 months approximately including remission (till date of filing of the present petition) and is presently confined in CJ-05, Tihar, New Delhi. Learned senior counsel for the petitioner further submits that despite becoming eligible for premature release in 2019, after completion of 14 years of incarceration including 10 years without remission, the name of the petitioner was sent to the SRB after a delay of 2 years and thereafter vide Minutes of Meeting dated 27.08.2021, the name of the petitioner was rejected in a mechanical manner in direct contravention of not only the Delhi Prison Rules and the fundamental rights of the petitioner enshrined in the Constitution of India, but also the recommendations, vide Letter No.233/10/97-98(FC) dated 26.09.2003, passed by the National Human Rights Commission and the Order No.F.18/5/94/Home (Genl) dated 16.07.2004 notified by the Govt. of NCT of Delhi.

4. Learned senior counsel for the petitioner also submits that the rejection order is an unreasoned order passed without appreciating the conduct of the petitioner in jail during his imprisonment, including the



letter of appreciation received by the petitioner for good conduct and services provided as a Canteen Sahayak, his socio-economic background, and the aspect of welfare of the petitioner and the circumstances under which the offence was committed, being in direct contravention of the provisions of Rule 1257 of the Delhi Prison Rules. Learned senior counsel for the petitioner further submits that the petitioner was only orally informed of the rejection of his premature release and was not even provided with a copy of the rejection order.

5. Learned senior counsel for the petitioner yet further submits that the petitioner was only 37 years old at the time of the commission of the offence and that the offence committed by the petitioner was one being misguided and out of naivety. The facts that the petitioner himself surrendered and that he has no other criminal record establish that he is not a habitual offender and that there is no possibility of the petitioner committing or repeating the crime. Presently, the petitioner is 68 years old and has plans to become a teacher and give free education to the children of poor section of society living in slum areas. He further submits that the petitioner has clean antecedents and the conduct of the petitioner in jail has been satisfactory, and on being released on bail/parole/furlough for over 20 times in total in the past, he has never misused the liberty granted to him and there are no punishments awarded to him till date. Learned senior counsel has relied upon the judgments passed in *Bhagwat Saran v. State of U.P.* (1983) 1 SCC 389, *Satish @ Sabbe v. The State of Uttar Pradesh* 2019 SCC OnLine SC 1892 and *Sushil Sharma v. State*, 2018 SCC Online Del 13277 and *Maneka Gandhi v. Union of India* (1978) SCC 248, to support his submissions.



6. Learned senior counsel for the petitioner lastly submits that in case the matter is remanded back to the SRB, the petitioner be released on parole/furlough in the interregnum. Amongst numerous judgments handed over in Court, he relies upon *State of Haryana v. Jagdish* (2010) 4 SCC 216, *Umesh Kumar & Ors. v. State (Govt.) of NCT of Delhi* [Order dated 09.10.2023 in W.P.(Crl.) 459/2023], *Sikander Mohd. Sahfi v. State of NCT of Delhi & Ors.* ILR (2012) III DELHI 159, in support of his aforesaid prayer.

7. Learned ASC for the State, on the other hand, relying upon the judgments passed by the Hon'ble Supreme Court in *Laxman Naskar v. State of West Bengal* (2000) 7 SCC 626, *State of Madhya Pradesh v. Ratan Singh and Ors.* (1976) 3 SCC 470 and the latest judgment of *Rajo v. State of Bihar*, 2023 SCC OnLine SC 1068, challenges the maintainability of the present petition and submits that the petitioner cannot seek remission of sentence/premature release as a matter of right and the State has complete discretion to remit or refuse to remit the sentence of a convict. It is her submission that no writ can be issued directing release of the convict i.e. the petitioner herein.

8. The learned ASC further submits that considering the gravity and heinousness of the offence wherein the petitioner hijacked an Indian Airlines flight, took it to Pakistan and then to Amritsar, putting the life of almost 200 passengers in jeopardy, the SRB has rightly exercised its discretion to not grant remission of sentence to the petitioner.

9. I have heard the learned senior counsel for the petitioner and learned ASC for the State and have perused the documents on record and also gone through the judgments cited by both sides.



10. As per the Nominal Roll of the petitioner, he has been in custody since 08.04.1993. As on date, he has undergone almost 16 years and 5 months of incarceration and has earned a total remission of approximately 3 years and 9 months. The petitioner has been working as a '*Lunger Sahayak*' and his overall jail conduct has been satisfactory. The petitioner has been granted bail/parole/furlough for a total of 26 times, and no punishment has been awarded to him since his incarceration.

11. According to the Medical Status Report of the petitioner called for by this Court, the petitioner has no history of chronic illness, however he is a follow-up case of Hypertension with diabetes mellitus-II. His general condition is stated to be stable in view of the treatment and necessary medications being provided to him under judicial custody.

12. The factors for consideration while deciding the application of a convict for premature release, as laid down by the Hon'ble Supreme Court in *Laxman Naskar (supra)* and which have been reiterated in *State of Haryana v. Jagdish* (2010) 4 SCC 216, are:-

- (i) *whether the offence affects the society at large;*
- (ii) *the probability of the crime being repeated;*
- (iii) *the potential of the convict to commit crimes in future;*
- (iv) *if any fruitful purpose is being served by keeping the convict in prison; and*
- (v) *the socio-economic condition of the convict's family.*

13. In the case at hand, the SRB has arrived at the conclusion that '*After taking into account all the facts of the case and circumstances, the manner in which the crime was committed, gruesome act of hijacking of an Indian Airlines flight, taking the flight to Pakistan and then to Amritsar, gravity of the offence etc., the Board unanimously **REJECTS** premature release* W.P.(CRL) 2589/2023



of convict Hari Singh S/o Sh. Ganeshi Lal at this stage.” Admittedly, the report of Delhi Police was not received and only the opposition of the Special Commissioner of Police (Crime) has been recorded. Further, though the Social Welfare Department, Delhi has given a favourable report for the premature release of the petitioner, the Chief Probation Officer, Delhi did not support the premature release of the petitioner.

14. The above clearly shows that in terms of the factors enumerated hereinabove, the SRB has only considered factor (i) i.e., *whether the offence affects the society at large*, but has failed to return any finding on the remaining factors (ii) to (v). Though this Court is mindful of the gravity and nature of the offence committed by the petitioner, however, in the opinion of this Court, the same cannot be the only factor to deny the benefit of premature release of the petitioner.

15. It is well established that when the convict has undergone substantial and long period of incarceration, the eventual purpose of imprisonment, in all circumstances, including the most serious offences, is reformatory and not retributive. To deny the benefit of remission to a convict, solely on the basis of the nature of crime committed, and without appreciating other parameters including but not limited to the convict's age, health and socio-economic condition and family relations, his post-conviction conduct, jail conduct etc., would not serve the ends of justice. It is of ultimate importance that the societal interest must be balanced with the rights of the convict and resorting to mechanical and clerical approach in dealing with the application of premature release where the convicts have undergone long periods of incarceration which will result in defeating the said purpose.



16. In view of the aforesaid, as also taking into consideration the factors as enumerated above as also that the reports of the Delhi Police and the Social Welfare Department, the post-prison record of the petitioner, period of incarceration, including his age, health, family conditions, jail conduct and his potential for social engagement, have not been considered by the SRB at the time of rejection of the application of the petitioner, this Court is of the considered opinion that the present is a fit case to be remanded back to the DG (Prisons) and the SRB to reconsider the application of the petitioner for premature release afresh.

16. In the facts and circumstances and without advertting to the merits of the matter, the DG (Prisons) and Sentence Review Board is directed to reconsider the case of the petitioner for premature release and return a finding thereof with adequate reasoning, especially after taking into account all the five factors as laid down by the Hon'ble Supreme Court in ***Laxman Naskar (supra)***, within a period of three weeks with intimation of the same to the petitioner within a period of one week thereafter.

16. As regards the prayer to release the petitioner on parole/furlough in the interregnum, in the opinion of this Court, the judgments relied upon by the petitioner cannot apply to the facts of the present case as the same relate to instances wherein the convict therein was already out on parole/furlough and wherein the Hon'ble Supreme Court had only granted extension of the said liberty, however that is not the case in the present petition. Thus, the same are of no relevance to the facts of the present case. Even otherwise, when the Court is remanding the matter back to the DG (Prisons) and Sentence Review Board for a *de novo* consideration, it is not felt appropriate for this Court to entertain grant of parole/furlough at ***W.P.(CRL) 2589/2023***



this stage.

17. A copy of this order be sent to the concerned Jail Superintendent as also to the DG (Prisons) for necessary information and compliance forthwith.

18. The present petition, alongwith the pending application, stands disposed of in the above terms.

SAURABH BANERJEE, J.

NOVEMBER 2, 2023/So