



2024 : DHC : 279



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

Judgment delivered on: 08.01.2024

+ **W.P.(CRL)72/2024**

RANI @ MANJU

..... Petitioner

Versus

STATE (GOVT.) OF NCT OF DELHI

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rishi Malhotra, Advocate

For the Respondent: Mr. Sanjay Lao, SC for State with Ms. Priyam Aggarwal, Adv. with ASI Shokindra, PS Krishna Nagar.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J. (ORAL)

CRL.M.A. 590/2024 & CRL.M.A. 592/2024

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(CRL)72/2024 & CRL.M.A. 591/2024

3. The present petition has been filed challenging the order dated 30.06.2023 passed by the Sentence Review Board (SRB) *vide* which the



application of the petitioner seeking pre-mature release was rejected.

4. A prayer has also been made seeking a direction to the respondent to consider the case of the petitioner for premature release under the State Government Policy dated 16.07.2004.

5. The petitioner along with other co-accused, was convicted under Sections 343/364A/365/120B IPC *vide* judgment dated 03.04.2012. Apart from being sentenced for a period of one year, five years and three years for the offences under Sections 343, 365 and 120B IPC, respectively, the appellant was awarded rigorous imprisonment for life for the offence under Section 364A IPC.

6. Criminal Appeal No. 394/2012 preferred by the appellant against the conviction and sentence, along with connected appeals of other co-convicts, was dismissed by a Division Bench of this Court *vide* judgment dated 29.05.2013.

7. In the aforesaid judgment rendered in appeal, this Court recorded a finding that the child Chirag was kidnapped and taken out of Delhi to a remote village in Sikandrabad. Ransom was repeatedly demanded on telephone by extending threats that harm would be caused or harm had been caused to the child. The petitioner and co-convict Dharmender were found to be a part of the conspiracy hatched by Puran and others. The Court also recorded a finding that kidnapping of Chirag in Delhi was not possible without the co-convict Dharmender and the present petitioner being a part of the conspiracy.

8. For the sake of completeness, it may be mentioned here that the petitioner was granted 2nd spell of furlough as per Delhi Prison Rules, 2018, for a period of two weeks from the date of her release, *vide* order



F.10(3496481)/CJ/Legal/PHQ/2023/M.72Q dated 10.11.2023 but instead of surrendering after the expiry of the period of furlough, the petitioner filed a writ petition under Article 32 of the Constitution of India before the Supreme Court i.e. W.P (Crl) 601/2023 titled as “**Rani @ Manju & Anr. vs. State (Govt. of NCT of Delhi)**” seeking premature release on the basis of the policy dated 16.07.2004.

9. However, the Supreme Court *vide* order dated 11.12.2023, dismissed the said writ petition with a batch of other petitions and granted liberty to the petitioners to approach the jurisdictional High Court. It was also ordered that the interim protection granted earlier shall continue to operate for a period of four weeks. The order dated 11.12.2023 is reproduced herein below for ready reference:

- “1. We are not inclined to entertain present petitions in the extraordinary jurisdiction under Article 32 of the Constitution of India.
2. These writ petitions are, accordingly, dismissed with liberty to approach the jurisdictional High Court.
3. The interim protection granted earlier by this court shall continue to operate for a period of four weeks from today.”

10. The learned counsel for the petitioner submits that the co-convict Puran @ Shankar S/o Shri Ram Bali was released prematurely on the basis of SRB’s recommendations dated 25.06.2021, a copy of which has been annexed as Annexure P-3 to the present petition. However, the case of the petitioner seeking premature release has been rejected by the SRB.

11. According to the learned counsel for the petitioner, the fallacy in the rejection order is that the respondents have chosen to apply and reject the



case of the petitioner under the Delhi Prison Rules, 2018 (hereinafter referred to as 'the Rules') and not as per the relevant policy of premature release dated 16.07.2004 (hereinafter referred to as 'the policy') which ought to have been applied while considering the case of the petitioner.

12. He invites the attention of the Court to the decision of Hon'ble Supreme Court passed in ***Joseph vs. The State of Kerala & Ors.***¹ wherein the Supreme Court, referring to its earlier decision, restated the proposition of law that remission policy prevailing on the date of conviction of a convict is to be applied in a given case, and if a more liberal policy exists on the day of consideration of the case for premature release, then such liberal policy would apply. The relevant para of the said decision reads as under:-

“19. A reading of the observations of this court in State of Haryana v. Jagdish, which was followed in State of Haryana v. Raj Kumar makes the position of law clear: the remission policy prevailing on the date of conviction, is to be applied in a given case, and if a more liberal policy exists on the day of consideration, then the latter would apply. This approach was recently followed by this court in Raja v. State of Bihar as well.”

(emphasis supplied)

13. He submits that impugned order of the SRB is a stereotyped order which has rejected the pre-mature release of the petitioner in general terms without advertng to the facts of the case. Inviting the attention to para 3.1 of the policy dated 16.07.2004 of 2004, learned counsel submits that the following three factors as spelled out in the policy dated 16.07.2004, were required to be considered while taking a decision on the petitioner's application for premature release:

¹ 2023 SCC OnLine SC 1211



- 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.

14. Referring to the impugned order, he submits that the same does not advert to any of the aforesaid three parameters enumerated in the policy. This according to the learned counsel shows complete non-application of mind.

15. He urges the court that the impugned order be set aside and the case of the petitioner be reconsidered for pre-mature release. He submits interim protection granted by the Hon'ble Supreme Court *vide* order dated 11.12.2023, may be continued till the case of the petitioner for premature release is considered afresh by the SRB. In support of his contention, the learned counsel has placed reliance on the decision of the Hon'ble Supreme Court in "**Rashidul Jafar @Chota vs. State of U.P.**" in W.P. (Crl.) 336/2019 dated 06.09.2022, whereby interim protection of bail was extended by the Supreme Court to the convicts undergoing life imprisonment who had already been released on bail pending disposal of their application for premature release.

16. *Per contra*, the learned Standing Counsel for the State submits that the next SRB is likely to be held within a period of two months and the case of the petitioner can be considered afresh by the said Board. He, however, opposes the grant of any interim relief to the petitioner in the form of exemption from surrendering till fresh consideration of petitioner's case for pre-mature release by the SRB.



17. I have heard the learned counsel for the petitioner, as well as, the learned Standing Counsel for the State and have perused the record.

18. The petitioner was convicted by the learned Trial Court *vide* judgment dated 03.04.2012 and it is not in dispute that at the relevant time, it was the policy dated 16.07.2004 which was in vogue. Therefore, in view of the law settled by the Hon'ble Supreme Court in **Joseph** (supra) and other cases referred to in paragraph 19 of the said judgment quoted above, the case of the petitioner for premature release has to be considered under the policy dated 16.07.2004.

19. Since the challenge has also been made to the impugned order of rejection of petitioner's premature release, at this juncture apt would it be to reproduce the said order, which reads thus:

Minutes of SRB Meeting held on 30th June, 2023.

67. RANI @ MANJU W/O SH. DHARMENDER –AGE-43

YRS

Rani @ Manju W/o Sh. Dharmender is undergoing life imprisonment in case FIR No. 129/2007, U/S 364-A/365/120-B/343 IPC, P.S. Krishna Nagar, Delhi for kidnapping of a minor child for ransom.

The convict has undergone:

Imprisonment of 14 years, 10 months & 22 days In actual and 17 years, 06 months & 11 days with remission. She has availed Parole 07 times and furlough 10 times.

Conclusion:

This case was deferred in the last meeting of the Sentence Review Board, held on 14.012.2022 for want of some more clarification regarding facts and circumstances of the offence committed and also to sought details pertaining to sentence undergone by her co-convict, who was already released by the



*SRB held on 27.08.2021. Accordingly the Board was apprised about the facts and circumstances of the offence committed in brief as well as the sentence undergone by her co-convict at the time of his release from Prison by the previous SRB. After a detailed discussion on the manner with which the crime was committed, the gravity of offence and perversity of the crime etc., the Board unanimously **REJECTS** premature release of convict Rani @ Manju W/o Sh. Dharmender at this stage.*

20. A perusal of the impugned order shows that in the conclusion part the SRB has noted that co-convict of the petitioner has already been released by the SRB held on 27.08.2021. Further, the Minutes of SRB Meeting held on 25.06.2021 (Annexure P-3) are also on record, which indicates that co-convict Puran @ Shankar S/o Ram Bali was recommended for premature release by the SRB. The recommendation of SRB *qua* co-convict Puran reads as under:-

Minutes of SRB Meeting held on 25th June, 2021

24. PURAN @ SHANKAR S/O SH. RAM BALI- AGE-33 YRS.

Puran @ Shankar S/o Sh. Ram Bali is undergoing life imprisonment in case FIR No. 129/2007, U/S 364-A/365/343/120-B IPC, P.S.Krishna Nagar, Delhi for kidnapping of a minor boy aged 3.5 years for ransom.

The convict has undergone:

*Imprisonment of 14 years and 06 days **in actual** and 16 years, 06 months and 27 days **with remission**. He has availed Parole 03 times and Furlough 05 times.*

Recommendation by Police:

The Delhi Police has neither recommended nor opposed his premature release in its report. Hometown police has strongly opposed his premature release in its report. However, the Deputy Commissioner of Delhi Police (Crime & Legal) has



stated that in view of the discussions his premature release may be considered.

Recommendation by Social Welfare Department:

*The Social Welfare Department, Delhi report has not been received. However, the Chief Probation Officer, Delhi has **supported** his premature release in the meeting.*

Conclusion:

*After taking into account all the facts and circumstances of the case i.e. the convict not having any previous criminal history, satisfactory jail conduct during incarceration as well as during parole and furlough availed, orientation towards being a useful member of the society etc., the Board **RECOMMENDS** premature **release** of convict Puran @ Shankar S/o Sh. Ram Ball.*

21. The relevant part of the judgment dated 29.05.2013 passed by the division bench of this Court in the criminal appeal of the appellant and other connected appeals, in so far as, it relates to an offence under Section 364A IPC for which life imprisonment was imposed, reads thus:

*“...30. Learned Counsel for the appellants have submitted that offence under Section 364A IPC is not made out. Reliance was placed on decision of this Court in **Surender Kumar @ Raja Vs. State**, Criminal Appeal No.738/2003 decided on 6th January, 2010 and it was highlighted that essential ingredient of Section 364A IPC is threat to cause death or hurt to the victim or conduct which gave rise to a reasonable apprehension that the kidnapped person would be hurt or killed. It was further submitted that a criminal conspiracy was not made out and reliance was placed upon decisions of the Supreme Court in **P.K. Narayanan Vs. State of Kerala**, (1995) 1 SCC 142 and **Sanjiv Kumar Vs. State of H.P.**, (1999) 2 SCC 288.*

31. Section 364A IPC mandates threat to cause hurt or death to the kidnapped or abducted person. Conduct which gives rise to a reasonable apprehension that such person may be put to



death or hurt will also bring the offence of kidnapping or abduction for ransom within the four corners of Section 364A IPC.

32. In the present case, there were threats that the kidnapped child Chirag would be harmed. In fact, PW-1 has deposed that he was informed on telephone that thumbs of his child had been chopped. It would be relevant here to refer to **Shyam Babu & Others Vs. State of Haryana**, 2008 (14) Scale 310 wherein Section 364A IPC was interpreted and it was held that the wording itself suggests that when kidnapping is done with the threat to cause death, hurt etc. to the kidnapped person, the offence is complete. In the present case, the child Chirag was kidnapped and taken out of Delhi to a remote village in Sikandrabad. Ransom was repeatedly demanded on telephone by extending threats that harm would be caused or harm had been caused to the child. Undoubtedly, offence under Section 364-A has been committed.

33. Similar view has been taken by the Supreme Court in **Malleshi Vs. State of Karnataka**, 2004 (S) SCC 95. Reference can also be made to **Suman Sood Vs. State of Rajasthan**, 2007 (5) SCC 634. In the said decision the Supreme Court also examined Section 120-B IPC and meaning of the term “conspiracy” and observed that conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence for the same. Decisions in **Sanjiv Kumar** (supra) and **P.K. Narayanan** (supra) also deal with the concept/term conspiracy. In **P.K. Narayanan** it has been observed that preparation or motive themselves do not constitute conspiracy and Court should be careful and not accept the charge of conspiracy on mere suspicion, surmises or inference unsupported by cogent or sufficient evidence. **We have referred to the clear-cut cogent and reliable evidence before recording our finding that appellants Dharmender and Rani were part of the conspiracy hatched by Puran and others. The kidnapping of Chirag in Delhi was not possible without the appellants Dharmender and Rani being part of the conspiracy. The telephone**



conversations are cogent and sufficient evidence which implicates and confirms their involvement.

*34. In view of the aforesaid discussion, we allow the appeals filed by Satyawar and Reshma and they are acquitted. **However, we do not find any merit in the appeals preferred by Dharmender, Rani and Puran.** Their appeals are dismissed. We also maintain the order of sentence passed against the said appellants. Satyawar and Reshma will be released forthwith unless required to be detained in any other case in accordance with law.”...*

22. A perusal of the impugned order shows that the SRB while rejecting the premature release of the petitioner has only considered- (i) the manner in which the crime was committed, (ii) the gravity of the offence, and (iii) the perversity of the crime. Needless to say, that all these three factors were common to co-convict Puran @ Shankar, whom the SRB recommended for premature release, rather the findings recorded in the judgment dismissing the appeals of Puran, Dharmender and Rani (petitioner herein) is that the conspiracy to kidnap was hatched by Puran and others and the present petitioner along with Dharmender, was a part of that conspiracy.

23. In the impugned order, though the SRB has noted that other co-convict was released from prison by the previous SRB but no reason has been given as to how the case of the present petitioner is different from the other co-convict, who was so released.

24. Further, the SRB has to consider other relevant factors as enumerated in Para 3.1 of the policy, apart from considering the circumstances in which the crime was committed. However, in the impugned order, there is no discussion on the aspects viz., (i) whether the convict has lost his potential for committing crime considering his overall conduct in jail during the 14



year incarceration, (ii) the possibility of reclaiming the convict as a useful member of the society, and (iii) the socio-economic condition of the convict's family. It is settled law that if the administrative power has been exercised on the non-consideration or non-application of mind to the relevant factors, the exercise of power will be regarded manifestly erroneous.² This being the position, the impugned order cannot be sustained.

25. In so far as the extension of interim protection granted by the Supreme Court *vide* order dated 11.12.2023 for a period of four weeks, is concerned, it may be noticed that the said protection was granted only for a period of four weeks while dismissing the writ petitions filed by the petitioners therein only to enable them to approach the jurisdictional High Court.

26. Furthermore, the petitioner as a convict is entitled for the grant of furlough in accordance with the Delhi Prison Rules, 2018, which have been framed by the Govt. of the NCT of Delhi in the exercise of the powers conferred by Section 71 of the Delhi Prisons Act, 2000.

27. Rule 1199 of Delhi Prison Rules, 2018 defines Furlough to mean *release of a petitioner for a short period of time after a gap of certain qualified numbers of years of incarceration by way of motivation for maintaining good conduct and to remain disciplined in the prison. This is purely an incentive for good conduct in the prison. Therefore, the period spent by the prisoner outside the prison on furlough shall be counted towards his sentence.* However, if the prisoner commits an offence during the period, he is released on furlough then the period will not be counted as

² Madhya Pradesh Special Police Establishment vs State of Madhya Pradesh; AIR 2005 SC 325.



sentence undergone.³

28. The objective of releasing a prisoner on parole and furlough are enumerated in Rule 1200 of the Delhi Prison Rules, 2018, which reads as under:

“1200. The objectives of releasing a prisoner on parole and furlough are:

- i. To enable the inmate to maintain continuity with his family life and deal with familial and social matters,*
- ii. To enable him to maintain and develop his self confidence,*
- iii. To enable him to develop constructive hope and active interest in life,*
- iv. To help him remain in touch with the developments in the outside world,*
- v. To help him remain physiologically and psychologically healthy,*
- vi. To enable him to overcome/recover from the stress and evil effects of incarceration, and*
- vii. To motivate him to maintain good conduct and discipline in the prison.”*

29. The eligibility criteria for release on furlough has been provided in Rules 1220 to the 1225 of the Rules. Rule 1221 provides for the spells and the total period for which a convict can be granted furlough in a conviction year and the same reads thus:

“1221. A prisoner, as described above, may be granted 7 weeks of furlough in three spells in a conviction year with maximum of 03 weeks in one spell.

Note :-Every eligible convict may be granted one spell of furlough in the month of his birthday, subject to fulfillment of the other conditions, without any application for furlough

³ Rule 1222 of the Delhi Prison Rules, 2018



moved by the convict. If the prisoner does not want to avail this furlough then written undertaking may be taken from him in this regard.”

30. As noted above, the petitioner was released on furlough *vide* order dated 10.11.2023 for a period of two weeks but the petitioner did not surrender to the Superintendent, Central Jail No.6, Tihar, New Delhi on the expiry of her period of release on furlough, which was one of the condition subject to which she was released. Instead, she filed a writ petition before the Supreme Court seeking her pre-mature release on the basis of Policy dated 16.07.2004, which came to be dismissed by the Supreme Court *vide* order dated 11.12.2023.

31. Clearly, a right to claim furlough, the eligibility therefor, the total period and the spells in a conviction year, in which the same can be granted, flows from the Rules. As per the Rule 1221, a convict can be granted furlough for seven (07) weeks in three spells in a conviction year with maximum of 03 weeks in one spell. It is settled legal proposition that neither the court nor any tribunal has the competence to issue a direction contrary to law and to act in contravention of a statutory provision. The Court has no competence to issue a direction contrary to law nor the Court can direct an authority to act in contravention to the statutory provisions.⁴ Further, unless the existence of legal right of a citizen and corresponding legal duty by the State or any public authority, could be read in the provision, a mandamus cannot be issued to enforce the same.⁵

32. Accordingly, the grant of furlough or extension thereof has to be in accord with the Rules. No rule has been pointed out and there appears to be

⁴ Maharishi Dayanand University v. Surjeet Kaur, (2010) 11 SCC 159



none which provides for continuation of furlough granted to the petitioner till the time her case for premature release is considered by the SRB. A somewhat similar contention that the convict be released on parole till such time as the name of the convict is not considered by the authorities and approved for his premature release, was rejected by this Court in “**Shashi Shekhar @ Neeraj vs. State of the NCT of Delhi & Ors**”, in W.P. (Crl.) 1311/2016. The relevant para of the said decision reads as under:

*“26. The petitioner seeks his release on parole till such time as his name is not considered by the authorities and approved for his premature release. Such a relief, in my view, cannot be granted as it would tantamount to doing indirectly, what the Court cannot directly. The Supreme Court in **Rashmi Rekha Thatoi and Anr. v. State of Orissa and Odrs.**, (2012) 5 SCC 690 while dealing with an order passed by the High Court under section 438 CrPC observed as follows:*

*“37. In this regard it is to be borne in mind that a court of law has to act within the statutory command and not deviate from it. It is well-settled proposition of law what cannot be done directly, cannot be done indirectly. While exercising a statutory power a court is bound to act within the four corners thereof. The statutory exercise of power stands on a different footing than exercise of power of judicial review. This has been so stated in **Bay Berry Apartments (P) Ltd. v. Shobha** (2006) 13 SCC 737 and **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey** (2006) 1 SCC 479.”*

33. The direction in **Rashidul Jafar @ Chota** (supra) that the interim bail already granted shall continue to remain in operation until the disposal of the application for premature release was passed in the facts of that case. In the

⁵ Hari Krishna Mandir Trust v. State of Maharashtra & Ors., (2020) 9 SCC 356



said case, 512 convicts undergoing a sentence of imprisonment for life in the State of Uttar Pradesh had sought premature release. The Supreme Court considering the policy for premature release in the State of U.P issued certain peremptory directions including a direction that any convict undergoing life imprisonment who has already been released on bail by the orders of the Hon'ble Supreme Court, in his case the order granting interim bail shall continue to remain in operation until the disposal of the application for premature release. Clearly, the direction given was that the interim bail already granted by the Hon'ble Supreme Court shall continue to remain in operation. However, in the present case no bail was granted by the Court, therefore, the question of continuation of the same by the Court would not arise. That apart, present is a case where furlough was granted by the competent authority for a period of two weeks under the Delhi Prison Rules, 2018, therefore, no direction can be given to extend the same pending consideration of petitioner's case for pre-mature release by the SRB, contrary to the rules, thus, the benefit of the direction in the said case will not enure to the petitioner.

34. In view of the above, the petition deserves to be allowed. Accordingly, the impugned order dated 30.06.2023 is set aside and the respondent is directed to consider afresh the case of the petitioner for premature release, in terms of the policy dated 16.07.2004, keeping in view the observations made in paragraphs 22 to 24 above, within a period of eight weeks from today. It is further directed that the order of SRB shall be uploaded within a period of one week after it is approved by the Hon'ble Lieutenant Governor of Delhi.

35. The petitioner is, however, granted two weeks' time from today to



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surrender before the concerned Jail Superintendent. It is made clear that the said period of two weeks will not be counted towards sentence undergone.

36. Copy of the order be forwarded to the concerned Jail Superintendent for necessary information and compliance.

37. The petition stands disposed of.

38. Order be uploaded on the website of the Court.

VIKAS MAHAJAN, J

JANUARY 08, 2024

MK/dss

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
Signing Date: 13/01/2024
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