



2024:DHC:581



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

% ***Date of Decision: 23rd January, 2024***

+ **W.P.(CRL) 230/2024**

MAHESH SHARMA @ CHINTU Petitioner
Through: **Mr. Rishi Malhotra, Advocate.**

versus

STATE (GOVT. OF NCT OF DELHI) Respondent
Through: **Mr. Sanjeev Bhandari, ASC for State**
with Mr. Kunal Mittal, Mr. Arijit Sharma and Ms.
Rishika, Advocates with SI Raj Kumar, PS:
Ambedkar Nagar.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

CRL.M.A. 2115/2024 and CRL.M.A. 2117/2024 (Exemptions)

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

W.P.(CRL) 230/2024 & CRL.M.A. 2116/2024 (Stay)

3. This writ petition has been filed on behalf of the Petitioner under Article 226 of the Constitution of India read with Section 482 Cr.P.C. challenging the order dated 30.06.2023 passed by the Sentence Review Board ('SRB'), whereby case of the Petitioner for premature release was rejected, applying the Delhi Prison Rules, 2018 (hereinafter referred to as



2024:DHC:581



‘2018 Rules’). Direction is sought to the Respondent to consider the case of the Petitioner afresh, under the Policy of premature release dated 16.07.2004 (hereinafter referred to as ‘2004 Policy’) or in the alternative direct the release of the Petitioner considering that he has already undergone 19.2 years of actual sentence and 23 years with remission.

4. Issue notice.

5. Mr. Sanjeev Bhandari, learned ASC accepts notice on behalf of the State.

6. Petitioner was convicted under Sections 302/34 IPC and was sentenced to undergo Rigorous Imprisonment for life by the learned Trial Court vide judgment dated 29.10.2009. Appeal filed against the conviction and sentence being CRL.A.57/2010 was dismissed by this Court vide judgment dated 18.03.2010, upholding the conviction and sentence.

7. Case of the Petitioner was considered for premature release by the SRB in the meeting held on 30.06.2023 alongwith 246 other life convicts, which included 63 fresh cases, 07 deferred cases and 163 rejected cases from the previous meetings as well as 14 cases directed by this Court. Petitioner’s case was rejected on the ground that Petitioner was re-arrested in other two cases during parole in 2012 and again in another case under Sections 365/394 IPC during emergency parole in 2021 and due to this non-reformative attitude, there was possibility of committing a crime again. For the sake of completeness, it may be mentioned that Petitioner has availed parole 13 times and furlough 04 times and at the time of consideration by the SRB, he had undergone imprisonment of 18 years 05 months and 02 days in actual and 20 years 10 months 25 days with remission.



2024:DHC:581



8. At this juncture, it will be relevant to mention that prior to filing this petition, Petitioner had approached the Supreme Court along with other Petitioners by way of a writ petition under Article 32 of the Constitution of India being W.P.(CRL) 670/2023 titled ***Hari Singh & Ors. v. State (Govt. of NCT of Delhi)***. The Supreme Court vide order dated 15.12.2023 dismissed the petition as withdrawn, granting liberty to the Petitioners therein to approach the jurisdictional High Court and wherever the Petitioners had interim protection, the same was continued for a period of 06 weeks from the date of the order, to enable them to take recourse to the remedy before the High Court. Order of the Supreme Court is extracted hereunder for ready reference:-

“1. Learned counsel appearing for the petitioners seeks permission to withdraw this petition with liberty to approach the jurisdictional High Court.

2. Permission is granted.

3. The writ petition is, accordingly, dismissed as withdrawn with the liberty sought for.

4. However, the furlough granted to the petitioners shall continue to operate for a period of six weeks from today, so as to take recourse to the remedy before the High Court.”

9. The primordial contention raised on behalf of the Petitioner is that the fallacy in rejecting the case of the Petitioner for premature release is that Respondent has considered and rejected the case of the Petitioner under 2018 Rules, whereas his case ought to have been considered under the 2004 Policy. In this context and in order to support the legal submission, learned counsel for the Petitioner relies on a judgment of the Supreme Court in ***Joseph v. State of Kerala and Others, 2023 SCC OnLine SC 1211***, wherein



2024:DHC:581



the Supreme Court reiterated and re-affirmed the legal proposition that the 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, then the latter would apply. Reliance is also placed on the judgment of the Supreme Court in ***Rashidul Jafar alias Chota v. State of Uttar Pradesh & Another, 2022 SCC OnLine SC 1201***, wherein the Supreme Court taking note of the state of affairs of the prisoners languishing in different Jails in the State of Uttar Pradesh, despite the fact that they were not released prematurely and had not only surpassed the desired period of sentence and had become eligible for premature release, had passed comprehensive directions to the State Government. It is urged that the Supreme Court in ***Kadir v. The State of Uttar Pradesh, SLP (CRL.) 4358/2021, decided on 13.08.2021***, directed NALSA to consider issuing uniform countrywide SOP for protecting the rights of similarly placed convicts to secure premature release as per law. It is lastly contended that a Co-ordinate Bench of this Court in ***Rani @ Manju v. State (Govt.) of NCT of Delhi, W.P.(CRL.) 72/2024***, vide judgment dated 08.01.2024, allowed the writ petition directing the State to consider the case of the Petitioner for premature release as per the policy in vogue at the time of conviction by the learned Trial Court i.e., Policy dated 16.07.2004.

10. The next plank of the argument of the Petitioner is that the impugned order has been passed mechanically, without any application of mind by the members of SRB. While considering the case of the Petitioner for premature release, the SRB ought to have considered the parameters/factors enumerated in paragraph 3.1 of 2004 Policy, which are as follows:-



2024 : DHC : 581



“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 433A 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 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.”

11. As the SRB treaded on a wrong path by considering the case of the Petitioner for premature release under 2018 Rules, none of the factors/parameters were adverted to and the impugned decision is thus flawed and deserves to be set aside and case of the Petitioner requires to be considered afresh under the 2004 Policy. Learned counsel for the Petitioner also urges that the interim protection granted by the Supreme Court vide order dated 15.12.2023 be continued and furlough granted to the Petitioner be extended till the SRB takes a decision on Petitioner's case for premature release. In this context, learned counsel relies on the order of the Supreme Court in ***Rashidul (supra)***, whereby interim protection was extended to the convicts undergoing life imprisonment, pending disposal of their case for premature release.



2024 : DHC : 581



12. Mr. Bhandari, learned ASC fairly states that in view of the judgment of the Supreme Court in *Joseph (supra)* and of this Court in *Rani (supra)*, the case of the Petitioner can be considered afresh by the SRB. However, opposition is raised to the grant of interim relief in the form of extension of furlough granted by the Supreme Court till fresh consideration by SRB.

13. I have heard the learned counsel for the Petitioner and learned ASC for the State.

14. Two questions arise for consideration before this Court in the present petition. First is whether the case of the Petitioner for premature release was required to be considered under the 2004 Policy or the 2018 Rules and secondly, whether Petitioner is entitled to extension of the interim protection granted by the Supreme Court i.e., extension of furlough till a fresh consideration is accorded by the SRB under 2004 Policy, in case the matter is remanded for fresh consideration. As far as the first issue is concerned, this need not detain this Court as the issue is no longer *res integra* and stands decided by the Supreme Court in *Joseph (supra)*. In the said case, the Supreme Court was considering the case of a life convict for an offence punishable under Sections 302/392 IPC, who had approached the Supreme Court for an appropriate direction to the State Government to prematurely release him, having been in custody i.e., actual imprisonment for over 26 years and having served a sentence of over 35 years, including over 08 years of remission earned and the contention of the Petitioner was that the remission policy prevailing on the date of conviction would have to apply while considering his case for premature release. Analyzing the applicable statutory provisions, rules etc., the Supreme Court restated and reiterated the



proposition of law that 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 date of consideration, the latter would apply. Relevant passages from the judgment are as follows:-

“A. *Applicable statutory provisions, rules, etc.*

18. *The Travancore-Cochin Prison Act came into force on 06.06.1950. By virtue of Sections 3(5) and 59(4), the state government enacted the 1958 Rules on 26.07.1958. The Kerala Prisons and Correctional Services (Management) Act, 2010 [hereafter ‘2010 Act’] came into force on 12/14.05.2010. By virtue of Section 102(2) of this Act (the savings clause) the 1958 Rules were to continue till the commencement of the new rules (i.e., the 2014 Rules), on 06/23.05.2014. On 14.06.2022, a government order was issued containing general guidelines on premature release, classifying prisoners such that those who had committed certain offences could not be released prematurely, while others, could only be considered after 25 years. This government order also, incorporated an executive instruction dated 20.04.2022 which excluded those involved in “murder of a woman” among other crimes, from the grant of premature release. Section 433-A of the CrPC, is also applicable to the extent that it forecloses the option of statutory remission until the convict who has been convicted for an offence punishable by life imprisonment (or commuted death sentence) has served 14 years of actual imprisonment.*

19. *Section 77 of the 2010 Act empowers the state government to, either suo moto or on recommendation of an Advisory Committee, prematurely release well-behaved, long term convicted prisoners with the objective of their better reformation and rehabilitation, as per prescribed rules. Rule 462 to 468 of the 2014 Rules, detail the procedure to be followed by the Advisory Committee while considering convicts for premature release. Whenever a prisoner completes 14 years actual imprisonment, they become eligible for consideration for premature release [ref: Rule 464(iv)]. The Advisory Committee/Board considers their case in detail, and make recommendations to the state government, which is empowered under Rule 468 of the 2014 Rules, to admit or reject the said recommendations.*

20. *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*



2024 : DHG : 581



policy exists on the day of consideration, then the latter would apply. This approach was recently followed by this court in Rajo v. State of Bihar as well.”

15. Recently, this Court in ***Rani (supra)***, was *in seisin* of a similar controversy. A challenge was laid in the said case to an order dated 30.06.2023 passed by the SRB, rejecting the case of the Petitioner seeking premature release by applying 2018 Rules. The Court held that in view of the judgment of the Supreme Court in ***Joseph (supra)*** and other cases referred in the said context, case of the Petitioner has to be considered under the 2004 Policy and directed the State to consider the case afresh, applying the relevant factors enumerated in paragraph 3.1 of the said Policy in the given facts and circumstances of the case.

16. Reading of the judgment of the Supreme Court in ***Joseph (supra)***, which is a binding dictum, makes it palpably clear that while considering the case of a convict for premature release, the remission policy which prevails on the date of conviction is to be applied by the SRB and if a more liberal policy exists on the date of consideration, the latter would apply. In the present case, indisputably Petitioner was convicted by the learned Trial Court vide judgment dated 29.10.2009 and the remission policy applicable on the said date was Policy dated 16.07.2004, which would thus govern the consideration of Petitioner's case by the SRB. It is not disputed on behalf of the State that case of the Petitioner was considered under the 2018 Rules and not under the 2004 Policy, which in my view, is an action clearly contrary to and in the teeth of the binding dictum of the Supreme Court in ***Joseph (supra)*** and cannot be sustained. In view of the aforesaid, the impugned



2024 : DHC : 581



minutes of meeting of the SRB dated 30.06.2023 qua the Petitioner deserve to be set aside and the case of the Petitioner requires to be considered for premature release afresh under the 2004 Policy.

17. There is also merit in the contention of the Petitioner that while considering the case for premature release, the factors laid down in the 2004 Policy are required to be considered by the SRB. By this Policy, '*the National Capital Territory of Delhi Sentence Reviewing Board*', was constituted to review the sentence awarded to a Prisoner undergoing Life sentence convicted by the Courts of competent jurisdiction in Delhi and to make recommendations on cases of premature release in appropriate cases. Paragraph 3.1 of the policy deals with '*eligibility for premature release*' and provides that every convicted prisoner undergoing sentence of life imprisonment and covered by the provisions of Section 433A Cr.P.C. shall be eligible to be considered for premature release from the prison immediately after serving a sentence of 14 years of actual imprisonment i.e., without remissions *albeit* it is also clarified that mere completion of 14 years by itself would not entitle a convict to automatic release and the SRB shall have the discretion to release a convict at an appropriate time. Significantly, paragraph 3.1 further provides that while considering the case of a convict, who is eligible for consideration for premature release, the SRB will consider the circumstances in which the crime was committed as well as other factors like those enumerated in clauses (a), (b) and (c) of paragraph 3.1. Court is thus in agreement with the Petitioner that while bestowing consideration on his case for premature release, SRB will have to take into account the factors enumerated in paragraph 3.1, i.e., (a) whether the convict



2024 : DHC : 581



has lost his potential for committing crime considering his overall conduct in Jail during the 14 years incarceration; (b) the possibility of reclaiming the convict as a useful member of the society; and (c) the socio-economic condition of the convict's family. It would be apposite to mention that the factors which the 2004 Policy mandates, were not taken into consideration by the SRB in the impugned minutes, for obvious reasons that the examination was under the 2018 Rules.

18. Coming to the second issue, order dated 15.12.2023 shows that the Supreme Court, while dismissing the writ petition as withdrawn, in ***Hari Singh (supra)***, had granted interim protection of 06 weeks to the Petitioners which included the Petitioner herein. Petitioner seeks extension of the interim protection i.e., extension of furlough till fresh consideration by the SRB. In ***Rani (supra)***, Court considered this issue at length and came to a conclusion, premised on Rule 1221 of 2018 Rules which deals with grant of furlough, that neither grant of furlough nor extension thereof can be outside the provisions of the Rules, which bind the Petitioner and the Court and rejected the prayer of the Petitioner to extend furlough till consideration by the SRB. Petitioner was granted two weeks' time from the date of the order to surrender with a further observation that period of two weeks will not be counted towards the sentence undergone. Relevant passages from the judgment are as follows:-

“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 sentence undergone.

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,



2024:DHC:581



without any application for furlough 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 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:



2024 : DHC : 581



“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 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 surrender before the concerned Jail Superintendent. It is made clear that*



2024:DHC:581



the said period of two weeks will not be counted towards sentence undergone.”

19. Having gone through the judgment, this Court is not persuaded to take a different view and as held by the Co-ordinate Bench, right to claim furlough, the eligibility thereof and the total period and spells in a conviction year are all governed by the 2018 Rules and the plea of the Petitioner to extend furlough in the teeth of Rule 1221 of 2018 Rules, cannot be countenanced in law.

20. Accordingly, the present petition is disposed of, setting aside the impugned decision dated 30.06.2023 qua the Petitioner, with a direction to the Respondent to consider afresh the case of the Petitioner for premature release in terms of Policy dated 16.07.2004, keeping in view paragraph 3.1 of the 2004 Policy and the factors enumerated therein, which no doubt from a reading of the language of paragraph 3.1 are not exhaustive. The decision shall be taken within a period of 08 weeks from today and the order of the SRB shall be uploaded within one week after the same is approved by the Hon'ble Lieutenant Governor of Delhi. Two weeks' time from today is granted to the Petitioner to surrender before the concerned Jail Superintendent making it clear that this period of two weeks' will not be counted towards sentence undergone.

21. Pending application stands disposed of.

22. It is also made clear that this Court has not expressed any opinion on the merits of the case and it is open to the SRB to take a decision with respect to the premature release of the Petitioner, in accordance with the 2004 Policy and the facts and circumstances of the case. Liberty is granted



2024 : DHC : 581



to the Petitioner to take recourse to remedies available in law, in case of any surviving grievance.

23. Copy of the judgment be forwarded to the concerned Jail Superintendent for information and necessary compliance.

JYOTI SINGH, J

JANUARY 23, 2024/du