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

+ W.P.(CRL) 244/2024 & CRL.M.A. 2238-40/2024

MANOJ KUMAR SINGH Petitioner

Through: Mr. Rishi Malhotra, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Ms. Nandita Rao, ASC for State with
Mr. Jasraj Singh Chhabra, Adv. with
SI Gaurav Yadav, PS. Nand Nagri.

+ W.P.(CRL) 3762/2023 & CRL.M.A. 34988/2023, 35018/2023

SONU Petitioner

Through: Mr. Rishi Malhotra, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Ms. Rupali Bandhopadhyaya, ASC for
State with Mr. Abhijeet Kumar, Adv.
with SI Nitesh Mahiya, PS. S.P.
Badli.

+ W.P.(CRL) 27/2024 & CRL.M.A. 238-40/2024

HANS RAJ @ HANSA Petitioner

Through: Mr. Rishi Malhotra, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Yasir Rauf Ansari, ASC for State
with Mr. Alok Sharma and Mr. Vasu
Agarwal, Advs. with SI Monu, PS.
Mangolpuri.

+ W.P.(CRL) 48/2024 & CRL.M.A. 412-414/2024

VINOD KUMAR Petitioner

Through: Mr. Rishi Malhotra, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Amol Sinha, ASC for State with
Mr. Kshitiz Garg, Mr. Ashvini
Kumar, Ms. Chavi Lazarus and Mr.



Arjun Singh Kadian, Adv. with Insp.
Deep Chand, PS. Vasant Vihar.

- + W.P.(CRL) 52/2024 & CRL.M.A. 447-49/2024
SATENDER SINGH Petitioner
Through: Mr. Rishi Malhotra, Adv.
versus
STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Mr. Amol Sinha, ASC for State with
Mr. Kshitiz Garg, Mr. Ashvini
Kumar, Ms. Chavi Lazarus, Mr.
Rahul Kochar and Mr. Arjun Singh
Kadian, Adv. with SI S. Saify, PS.
Chanakyapuri, New Delhi.
- + W.P.(CRL) 70/2024 & CRL.M.A. 578-80/2024
PINTU@BINTU Petitioner
Through: Mr. Rishi Malhotra, Adv.
versus
STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Mr. Sanjay Lao, SC for State with
Ms. Priyam Aggarwal, Adv. with SI
Rohit, PS. Sultanpuri.
- + W.P.(CRL) 3780/2023 & CRL.M.A. 35167/2023
RAJA RAM Petitioner
Through: Mr. Rishi Malhotra, Adv.
versus
STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Mr. Sanjay Lao, SC for State with
Ms. Priyam Aggarwal, Adv. with SI
Rohit, PS. Sultanpuri.
- + W.P.(CRL) 3803/2023 & CRL.M.A. 35366/2023
MOTI @ MOHIT Petitioner
Through: Mr. Rishi Malhotra, Adv.
versus



STATE (GOVT. OF NCT OF DELHI) Respondent
Through: Mr. Rahul Tyagi, ASC for State with
Ms. Priya Rai, Mr. Sangeet Sibou,
Mr. Jatin and Mr. Aashish Chojar,
Advs. with SI Shiv Singh, PS.
Defence Colony.

+ W.P.(CRL) 3820/2023 & CRL.M.A. 35506/2023, 35691/2023
SURENDER KUMAR Petitioner

Through: Mr. Rishi Malhotra, Adv.
versus

STATE (GOVT.OF NCT OF DELHI) Respondent
Through: Mr. Sanjeev Bhandari, ASC for State
with Mr. Kunal Mittal, Mr. Arjit
Sharma and Ms. Rishika, Advs. with
Insp. Deep Chand, PS. Vasant Vihar.

+ W.P.(CRL) 3827/2023 & CRL.M.A. 35535/2023, 35665/2023
VIJAY KUMAR @ MANNU Petitioner

Through: Mr. Rishi Malhotra, Adv.
versus

STATE (GOVT.OF NCT OF DELHI) Respondent
Through: Mr. Sanjeev Bhandari, ASC for State
with Mr. Kunal Mittal, Mr. Arjit
Sharma and Ms. Rishika, Advs. with
SI Monu, PS. Mangolpuri.

+ W.P.(CRL) 3828/2023 & CRL.M.A. 35536/2023, 35632/2023
ASHISH NANDWANA Petitioner

Through: Mr. Rishi Malhotra, Adv.
versus

STATE (GOVT.OF NCT OF DELHI) Respondent
Through: Mr. Sanjeev Bhandari, ASC for State
with Mr. Kunal Mittal, Mr. Arjit
Sharma and Ms. Rishika, Advs. with
ASI Ashok Malik, PS. H.N.Din.

+ W.P.(CRL) 3836/2023 & CRL.M.A. 35633/2023, 35720/2023



KRISHNA

..... Petitioner

Through: Mr. Rishi Malhotra, Adv.

versus

STATE (GOVT.OF NCT OF DELHI) & ANR. Respondents

Through: Mr. Sanjeev Bhandari, ASC for State
with Mr. Kunal Mittal, Mr. Arjit
Sharma and Ms. Rishika, Adv. with
SI Ashok, PS. Jaffarpur Kalan.

+ W.P.(CRL) 233/2024 & CRL.M.A. 2136/2024

HARPREET SINGH

..... Petitioner

Through: Mr. Rishi Malhotra, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Mr. Sanjay Lao, SC for State with
Ms. Priyam Aggarwal, Adv. with SI
S. Saify, PS. Chanakyapuri, New
Delhi.

+ W.P.(CRL) 245/2024 & CRL.M.A. 2248/2024

HARI SINGH

..... Petitioner

Through: Mr. Rishi Malhotra, Adv.

versus

STATE (GOVT. OF NCT OF DELHI) Respondent

Through: Ms. Nandita Rao, ASC for State with
Mr. Jasraj Singh Chhabra, Adv. with
SI Anupam Gautam, PS. Domestic
Airport.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

24.01.2024

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1. These writ petitions have been filed seeking almost identical reliefs. The challenge is to the orders passed by the Sentence Review Board (SRB) *vide* which the applications of the petitioners seeking pre-mature release were rejected.



2. 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.
3. The petitioners in all the petitions are convicts who are undergoing life imprisonment and their conviction has attained finality. Invariably all the petitioners were granted furlough as per Delhi Prison Rules, 2018, *vide* separate orders, *inter-alia*, subject to the condition that they will surrender before the Superintendent of Jail after the expiry of the period of furlough.
4. In the case of the petitioners in W.P. (CRL) 3762/2023, W.P.(CRL) 27/2024, W.P.(CRL) 48/2024, W.P.(CRL) 52/2024, W.P.(CRL)70/2024, W.P.(CRL) 3780/2023, W.P.(CRL) 3803/2023, W.P.(CRL) 3820/2023, W.P.(CRL) 3827/2023, W.P.(CRL) 3828/2023, W.P.(CRL) 3836/2023, W.P.(CRL) 245/2024 the original period of furlough has expired but instead of surrendering after the expiry of the period of furlough, they filed writ petitions under Article 32 of the Constitution of India before the Hon'ble Supreme Court seeking premature release on the basis of the policy dated 16.07.2004.
5. However, the Hon'ble Supreme Court dismissed the batch of writ petitions and granted liberty to approach the jurisdictional High Court. However, it was also ordered that the interim protection granted earlier shall continue to operate for a period of four weeks.
6. The petitioners in W.P. (CRL) 244/2024 and W.P. (CRL) 233/2024 have been released on furlough on 05.01.2024 and 03.01.2024 respectively and the period of furlough is set to expire on 27.01.2024 and 25.01.2024.
7. According to the learned counsel for the petitioner the cases of the petitioners for pre-mature release have been considered and rejected 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 cases of the petitioners.

8. Elaborating on his submission the learned counsel submits that all the petitioners were convicted prior to the framing of Rules when the policy of premature release dated 16.07.2004 was in vogue, therefore, the petitioners’ ought to have been considered for pre-mature release in terms of the said policy. In support of his contention, he placed reliance on 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 decisions, 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)

9. He submits that the impugned orders of the SRB are stereotyped orders. The said orders does not advert to any of the three parameters

¹ 2023 SCC OnLine SC 1211



enumerated in para 3.1 of the policy. This according to the learned counsel shows complete non-application of mind. The three factors as spelled out in para 3.1 of the policy dated 16.07.2004, which are required to be considered while taking a decision on the application for premature release, reads as under:

- 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.

10. Relying upon the decision of this Court in ***Rani @ Manju v. State (Govt.) of NCT of Delhi***² he urges the court that the impugned order be set aside and the directions may be given for reconsideration of petitioners' case for premature release in terms of the policy of premature release dated 16.07.2004 and further the petitioners may be granted one week time to surrender on the lines of the said decision.

11. *Per contra*, the learned Standing Counsel / learned Additional Standing Counsel appearing on behalf of the State in this batch of writ petitions submit that the next SRB is likely to be held within a period of two months and the case of the petitioners can be considered afresh by the Board. However, the grant of any interim relief to the petitioners in the form of exemption from surrendering till fresh consideration of petitioner's case for pre-mature release by the SRB, is opposed placing reliance on the decision in ***Rani @ Manju*** (supra).

12. I have heard the learned counsel for the petitioner, as well as, the

² WP(CrL.)72/2024 : 2024:DHC:279



learned Standing Counsel for the State and have perused the record.

13. There is merit in the submission of the learned counsel for the petitioner that since all the petitioners were admittedly convicted by the learned Trial Court prior to the framing of the Delhi Prison Rules, 2018 when the policy dated 16.07.2004 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 petitioners ought to have been considered for premature release under the policy dated 16.07.2004.

14. A perusal of the impugned orders of rejection of petitioners' premature release shows that all the orders are almost on the same lines, in as much as, the said orders have been passed taking into account – (i) the facts and circumstances of the case, (ii) the manner in which the crime was committed, (iii) the gravity of the offence, and (iv) the perversity of the crime.

15. Needless to say that while considering the premature release of a convict the SRB has to consider other relevant factors as enumerated in Para 3.1 of the policy, apart from considering the gravity, the circumstances and the manner in which the crime was committed. However, in the impugned orders, 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 19 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 trite 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.³

16. For the aforesaid reasons, the impugned orders of the SRB rejecting the premature release of the petitioners cannot be sustained.

17. In so far as the relief sought in some of the petitions to extend the furlough granted to the petitioners till the time the SRB reconsiders their cases for premature release, suffice it to say that this Court in ***Rani @ Manju*** (supra) has already taken a view that the right of a convict to claim furlough, the eligibility therefor, the total period and the spells in which the furlough could be granted in a conviction year, flows from the Delhi Prison Rules, 2018. There is no provision in the Rules which provides for continuation of furlough or parole granted to the petitioner till the time, their case for premature release is considered by the SRB and it is trite law that 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.

18. In view of the above, the petitions deserve to be partly allowed. Accordingly, the impugned orders passed by the SRB are set aside. The respondent is directed to consider afresh the cases of the petitioners for premature release, in terms of the policy dated 16.07.2004, keeping in view the observations made hereinabove, 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 Approving Authority.

19. Keeping in view that these petitions were under consideration and in case of some of the petitioners the furlough granted to them has been

³ Madhya Pradesh Special Police Establishment vs State of Madhya Pradesh; AIR 2005 SC 325.



extended by the Hon'ble Supreme Court or by this Court as an interim measure even after its expiry and in some other cases the furlough granted to the petitioners by the competent authority is expiring either today or in a day or two, all the petitioners are granted one week time from today to surrender before the concerned Jail Superintendent. It is made clear that the said period of one week will not be counted towards sentence undergone.

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

21. The petitions and all the pending applications stand disposed of.

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

VIKAS MAHAJAN, J

JANUARY 24, 2024
MK/dss