



\$~41

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(CRL) 288/2024 & CRL.M.A. 2604-06/2024

KABIR

..... Petitioner

Through: Mr. Jaydip Pati, Mr. Rishi Malhotra
and Mr. Nitish Kumar Rai, Advs.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Mr. Sanjay Lao, SC for State with
Ms. Priyam Aggarwal, Adv. with
Insp. Pankaj Gulliya, PS.NFC/SE.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

25.01.2024

%

1. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking the following relief:-

“...A. Issue a Writ, Order or direction in the nature of Mandamus to the Respondent to consider the case of the Petitioner for premature release under the policy dated 16.7.04;

B. Issue a Writ, Order or direction in the nature of Mandamus to the State Government and direct the release of the petitioner under the policy of premature release dated 16.7.04 forthwith;

C. that the furlough granted to the petitioner by the Jail Authority on 15.1.24 which expires on 30.1.24 may be extended till further orders by this Hon'ble Court; and”...

2. Issue notice. The learned Standing Counsel for the State accepts notice.

3. The learned counsel for the petitioner submits the present petition is covered by a decision of this Court in ***Rani @ Manju vs. State (Govt.) of***



*NCT of Delhi*¹, and urges that the petition be disposed of in terms thereof. Accordingly, with the consent of the parties, the present petition is taken up for disposal without calling upon the State to file its counter affidavit.

4. The learned counsel for the petitioner submits that the petitioner was convicted under Sections 302/34 IPC in connection with case FIR No. 490/2009 registered at Police Station New Friends Colony, Delhi *vide* judgment of the learned Trial Court dated 21.12.2017 and was subsequently sentenced for life imprisonment *vide* order dated 29.01.2018. The appeal preferred by the petitioner being CRL.A.582/2018 against the order of conviction and sentence, came to be dismissed by this Court *vide* judgment dated 29.01.2019.

5. It is an admitted case of the petitioner that he has not yet been considered for premature release by the Sentence Review Board. The learned counsel submits that as on date the petitioner has completed 14 years of sentence, therefore, he has become eligible to be considered for premature release, in terms of the policy dated 16.07.2004.

6. Elaborating on his submission, the learned counsel submits that all convicts who were convicted prior to the framing of Delhi Prison Rules, 2018, when the policy of premature release dated 16.07.2004 was in vogue, are to be considered according to the said policy. This position is not disputed by the learned Standing Counsel for the State.

7. Reference in this regard may also be had to the decision of Hon'ble Supreme Court in *Joseph vs. State of Kerala and Others*, wherein the Supreme Court, referring to its earlier decision restated the proposition that remission policy prevailing on the date of conviction of a convict is to be

¹ Dated 08.01.2024 in W.P. (Crl). 72/2024



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 vs. Jagdish, which was followed in State of Haryana vs. 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 Rajo vs. State of Bihar as well.”...

8. In view of the above position, the respondent is directed to consider the petitioner for premature release as per his eligibility, in terms of the premature release policy dated 16.07.2004.

9. The learned Standing Counsel for the State has handed over a copy of the order dated 10.01.2024 passed by the competent authority whereby the petitioner was granted furlough for a period of two weeks, as per the Delhi Prison Rules, 2018 on the conditions mentioned therein. The said order is taken on record.

10. A perusal of the said order dated 10.01.2024 shows that one of the conditions on which the petitioner was granted furlough was that he shall surrender to the Superintendent, Central Jail No.14, Mandoli, Delhi on the expiry of his period of release on furlough.

11. The learned counsel for the petitioner submits that the petitioner was released on furlough for a period of two weeks on 15.01.2024 and he is obliged to surrender on 30.01.2024. He, however, urges the Court to grant two weeks additional time to the petitioner to, as was granted by this Court to the petitioners in **Rani @ Manju** (supra). This prayer cannot be acceded to for the reason that in **Rani @ Manju** (supra) the furlough granted to the



petitioner therein had been extended by the Hon'ble Supreme Court as an interim measure during the pendency of the petition, therefore, two weeks time was granted to her to surrender, but in the present case no such interim relief is there, rather the present petition is being disposed of at the notice stage itself. Besides that, the petitioner still has time to surrender as his furlough of two weeks will expire on 30.01.2024.

12. In view of the above, it is directed that the petitioner shall surrender on the stipulated dated i.e. 30.01.2024.

13. The petition stands disposed of in the above terms.

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

15. Order be uploaded on the website of this Court.

VIKAS MAHAJAN, J

JANUARY 25, 2024/dss