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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% *Date of Decision: 30.01.2024*

+ W.P.(CRL) 318/2024

AMRIT SHARMA@AMIT

..... Petitioner

Through: Mr. Rishi Malhotra and Mr. Pravesh
Bahuguna, Advs.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms. Nandita Rao, ASC (Crl.) for State
(GNCTD) with Mr. Amit Peswani and
Mr. Jasraj S. Chhabra, Advs.
SI Vipin Rathi, PS Shalimar Bagh.

CORAM:**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA**

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J U D G M E N T**ANOOP KUMAR MENDIRATTA, J (ORAL)****CRL.M.As. 2900/2024 & 2902/2024**

Exemption allowed, subject to just exceptions.

Applications stand disposed of.

W.P.(CRL) 318/2024 & CRL.M.A. 2901/2024

1. A 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 preferred on behalf of the petitioner with the following prayer:

"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. Issue a Writ, Order or direction in the nature of Mandamus to set aside the order dated 30.6.23 passed by SRB which interalia has rejected the case of prematurti release of the petitioner under the Rule, 2018 which is not applicable in the case of petitioner; or

D. that the furlough granted to the petitioner by the Jail Authority on 9.1.24 which expires on 31.1.24 may be extended till further orders by this Hon'ble Court."

2. Issue notice. Learned ASC for the State appears on advance notice and accepts notice.
3. In brief, as per the case of the petitioner, he was convicted under Section 363/366/376(2) IPC and sentenced to undergo RI for life by the learned Trial Court vide judgment dated 27.09.2010. The Criminal Appeal preferred by the petitioner was dismissed vide judgement dated 18.10.2012. The grievance of the petitioner is that vide order dated 30.06.2023 passed by Sentence Review Board (SRB), the case of the petitioner for premature release has been rejected despite the fact that the petitioner has undergone 13.9 years of actual custody and 17.6 years with remission as on 30.06.2023.
4. It is contended by learned counsel for the petitioner that the petitioner is governed vide policy dated 16.07.2004, which was prevailing on the date of conviction of the petitioner but his case for premature release has been wrongly considered under Delhi Prisons Rules, 2018. It is further submitted that petitioner is presently out on furlough, which expires on 31.01.2024. It is emphasized that the remission policy prevailing on the date of conviction, needs to be applied.
5. On the other hand, learned ASC for the State submits that a batch of petitions involving similar issue has been decided by the Coordinate Bench



in W.P.(CRL.) 244/2024 titled **Manoj Kumar Singh v. State (Govt. of NCT of Delhi)** vide order dated 24.01.2024 and the case of the petitioner can be accordingly considered afresh in terms of policy dated 16.07.2004 as and when the next meeting of SRB is scheduled.

6. The observations in **Manoj Kumar Singh v. State (Govt. of NCT of Delhi)** (supra) may be beneficially reproduced:

“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 therefore, 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 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.”

7. In **Sangeet and Another v. State of Haryana, (2013) 2 SCC 452**, it



was observed that a convict undergoing a sentence does not have right to get a remission of sentence but he certainly does have a right to have his case considered for the grant of remission. The term of sentence spanning the life of convict can be curtailed by the Appropriate Government for good and valid reasons in exercise of its power under Section 432 of Code of Criminal Procedure, 1973 (Cr.P.C.). There has to be application of mind on the issue of grant of remission and the power of remission cannot be exercised arbitrarily.

8. Further, with regard to the remission policy which may be applicable in a given case, in *State of Haryana v. Jagdish*, (2010) 4 SCC 216, the question considered by the Three Judge Bench was whether the policy which provides for remission in sentence should be that which was existing on the date of conviction of accused or should it be the policy that existed on the date of consideration of his case for premature release by the Appropriate Authority. It was further held that the case for remission has to be considered on the strength of the policy that was existing on the date of conviction of the accused. Further, in case no liberal policy prevails on the date of consideration of the case of a convict under life imprisonment for premature release, he should be given the benefit thereof subject to Section 433-A of Cr.P.C.

9. Considering the facts and circumstances, respondent is directed to consider afresh the case of the petitioner for premature release in terms of the beneficial policy applicable to the petitioner on the date of conviction, in the next meeting of SRB. SRB shall consider the relevant factors in terms of the policy, for premature release, without being influenced by any observations made in the present order.



No grounds are made out for further extending the period of furlough granted to the petitioner by the Competent Authority. Petition is accordingly disposed of. Pending application, if any, also stands disposed of.

A copy of this order be forwarded to the concerned Superintendent Jail for information and compliance.

ANOOP KUMAR MENDIRATTA, J.

JANUARY 30, 2024/akc/sd