



2024:DHC:5035



\$~5

* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Pronounced on: 09.07.2024*+ **W.P.(CRL) 590/2024****GURVINDER SINGH**

..... Petitioner

Through: Mr Rohan J. Alva, Advocate
(DHCLSC).

versus

THE STATE (GOVT. OF NCT) OF DELHI & ANR..... RespondentsThrough: Mr Sanjeev Bhandari, ASC for the
State with Mr Kunal Mittal, Mr Arjit
Sharma and Mr Vaibhav Vats,
Advocates with SI Gaurav, PS Hari
Nagar.**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.**

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India read with Section 482 CrPC seeking setting aside of order No.F.18/102/2003-HG/2023/3385-86 dated 21.11.2023, whereby the recommendations / minutes of meeting of Sentence Review Board held on 30.06.2023 were accepted and case of the petitioner for premature release was dismissed. Further, the prayer has been made to release the petitioner on bail / parole / furlough / etc. till the disposal of the present petition.

2. The facts which are relevant for the adjudication of the present Writ Petition are that the petitioner was convicted and has been sentenced to



undergo life imprisonment for an offence under Sections 376/365/323 IPC. The judgment of conviction was passed on 07.03.2011 whereas the order of sentence was passed on 08.03.2011. Appeal against conviction and sentence has been dismissed by this Court. It is averred in the petition that as on the date of consideration of the applications seeking premature release, the petitioner had undergone imprisonment of 14 years, 04 months and 27 days in actual and 17 years, 09 months and 05 days with remission. He has availed parole 06 times and furlough 08 times.

3. The primary ground urged on behalf of the present petitioner is that impugned order dated 30.06.2023 *vide* which the application of the petitioner seeking premature release was rejected has been passed in a mechanical manner without considering whether the present petitioner is capable of reintegrating into the society and his conduct inside, as well as, outside the prison manifests that he has reformed. It is further submitted that the conduct of the petitioner has been satisfactory and that he has never misused or abused the grant of parole/furlough and has been maintaining excellent conduct during incarceration and same is reflective of petitioner's readiness to be reintegrated into the society.

4. It is further urged that the petitioner being an ideal convict fulfils all objective criteria enumerated by the Sentence Review Board (SRB) as laid down under the Policy of 2004, as well as, the Delhi Prison Rules, 2018. He also contends that the SRB while rejecting the application of the petitioner has failed to take into account the principles of reformation and urges the Court to take into account the numerous good elements surrounding the case of the petitioner; including lack of any punishments imposed, family responsibilities, active participation in jail activities including certificates of



appreciation from the office of the Superintendent for the petitioner's support to Jail administration in smooth functioning of the prison.

5. He submits that impugned order of the SRB is stereotyped order which has rejected the pre-mature release of the petitioner in general terms without advertng to the facts of the case. It is submitted that the SRB has failed to provide sufficient and fair reasoning for passing the order. To buttress the submission, attention of the Court was drawn to the minutes of the SRB meeting held on 21.10.2021 to submit that a perusal of the minutes dated 21.10.2021 and 30.06.2023 show that the principal ground for the SRB to reject petitioner's case for pre-mature release was the gravity, perversity and nature of the crime. He submits the factors as required under law, were not considered. The attention of the Court was also drawn to Rules 1251 under the Delhi Prison Rules, 2018 (in short 'Rules of 2018').

6. *Per contra*, the learned Additional Standing Counsel for the State submits that the next SRB is likely to be held soon and the case of the petitioner can be considered afresh by the said Board.

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

8. 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 order dated 30.06.2023, which reads thus:

"Minutes of SRB Meeting held on 30th June, 2023
209. GURVINDER SINGH S/O SH. SARDAR SWAROOP
SINGH – AGE – 54 YRS.

Gurvinder Singh S/o Sh. Sardar Swaroop Singh is undergoing life imprisonment in case FIR No. 288/2008, U/S- 376/365/323 IPC, P.S. Hari Nagar, Delhi for rape of a 10 Years minor girl.



The convict has undergone:

*Imprisonment of 14 years, 04 months and 27 days **in actual** and 17 years, 09 months and 05 days **with remission**. He has availed Parole 06 times and Furlough 08 times.*

Conclusion:

*Reports received from Police and Social Welfare Departments for premature release of convict and after taking into account all the facts and circumstances under which the offence was committed, the convict having committed a heinous crime i.e. rape of a 10 years minor girl, the gravity, perversity and nature of the crime, highly opposed by Police, un-satisfactory jail conduct in view of punishment etc., the Board unanimously **REJECTS** premature release of convict Gurvinder Singh S/o Sh. Sardar Swaroop Singh at this stage.”*

9. A perusal of the impugned order shows that the SRB while rejecting the premature release of the petitioner has only considered- (i) the facts and circumstances under which the crime was committed, (ii) the gravity, perversity and nature of the crime, (iii) unsatisfactory jail conduct, and (iv) the fact that the police opposed the premature release. However, it is noted that the SRB has to consider other relevant factors as enumerated in Para 3.1 of the policy dated 16.07.2004 and Rule 1251 of the Delhi Prison Rules, 2018 apart from considering the circumstances in which the crime was committed, as well as, the gravity, perversity and nature of crime.

10. Prior to the Rules of 2018, the policy dated 16.07.2004 was in place which provided for the relevant factors to be considered by the SRB for deciding the case of a convict for pre-mature release. The para 3.1 of the policy reads thus:

“3.1 Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the



provisions of Section 433A Cr.PC 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 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."*

11. Likewise Rule 1251 of Delhi Prison Rules reads thus:

1251. 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 recommend 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 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.

12. 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 without considering, or without application of mind to, the relevant factors, the exercise of power will be regarded manifestly erroneous.¹ This being the position, the impugned order cannot be sustained.

13. As far as the prayer of the petitioner to be released on bail / parole / furlough is concerned, the same cannot be accepted as the petitioner is already in custody and this Court in *Hari Singh Vs. State of NCT of Delhi* 2023 SCC OnLine Del 718 has negated a similar prayer observing as under:

“18. As regards the prayer to release the petitioner on parole/furlough in the interregnum, in the opinion of this Court, the judgments relied upon by the petitioner cannot apply to the facts of the present case as the same relate to instances wherein the convict therein was already out on parole/furlough and wherein the Hon'ble Supreme Court had only granted extension of the said liberty, however that is not the case in the present petition. Thus, the same are of no relevance to the facts of the present case. Even otherwise, when the Court is remanding the matter back to the DG (Prisons) and Sentence Review Board for a de novo

¹ Madhya Pradesh Special Police Establishment vs. State of Madhya Pradesh, AIR 2005 SC 325.



consideration, it is not felt appropriate for this Court to entertain grant of parole/furlough at this stage.”

14. However, the petitioner is always at liberty to apply to the competent authority for grant of parole/furlough in accordance with Delhi Prison Rules, 2018. In the event any such application is made by the petitioner, it is directed that the competent authority shall consider it on its own merits and dispose of the same within the period stipulated under the said Rules.

15. In view of the above discussion, the petition deserves to be allowed. Accordingly, the impugned order dated 30.06.2023 is set aside and the respondent/SRB is directed to consider afresh the case of the petitioner for premature release, in terms of the policy dated 16.07.2004 or in terms of the Delhi Prison Rules, 2018, whichever is beneficial to the petitioner, 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.

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

17. The petition stands disposed of.

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

19. Order *dasti* under signatures of the Court Master.

VIKAS MAHAJAN, J

JULY 9, 2024
N.S. ASWAL