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

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Date of Decision: 25th April, 2024

+ W.P.(CRL) 1268/2024

BIJENDER & ORS.

..... Petitioners

Through: Mr. Rishi Malhotra, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondent

Through: Ms. Rupali Bandhopadhyaya, ASC for
State with Mr. Abhijeet Kumar, Advocate with
Insp. Ajay Negi and SI Ravi Kumar.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGEMENT****JYOTI SINGH, J. (ORAL)****CRL.M.A. 12338/2024 (Exemption)**

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

W.P.(CRL) 1268/2024 & CRL.M.A. 12336/2024 (Stay) and CRL.M.A. 12337/2024 (exemption from filing lengthy list of dates)

3. This writ petition has been preferred on behalf of the Petitioners 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 Petitioners for premature release was rejected, applying the Delhi Prison Rules, 2018 (hereinafter referred to as '2018 Rules'). Direction is sought to the Respondent to consider the case of the Petitioners afresh, under the Policy of premature release dated 16.07.2004 or in the alternative, direct the release of the Petitioners.



4. Issue notice.
5. Ms. Rupali Bandhopadhyay, learned ASC accepts notice on behalf of the State.
6. Factual matrix to the extent relevant is that Petitioners were convicted and have been sentenced to undergo life imprisonment for different offences. Appeals against the conviction and sentence have been dismissed by this Court. It is averred in the petition that as on 30.06.2023, when the SRB considered and rejected their cases for premature release, Petitioner No. 1 had undergone actual sentence of 14.3 years and with remission 17 years; Petitioner No. 2 had undergone actual sentence of 16.6 years and with remission 21 years; Petitioner No. 3 had undergone actual sentence of 17.6 years and with remission 20.6 years; Petitioner No. 4 had undergone actual sentence of 11.6 years and with remission 14 years; Petitioner No. 5 has already undergone 15 years with remission; and Petitioner No. 6 had undergone actual sentence of 15.6 years and with remission 19.6 years.
7. Cases of the Petitioners were considered for premature release by the SRB in the meeting held on 30.06.2023 along with other life convicts which included 63 fresh cases, 07 deferred cases and 163 rejected cases from previous meetings as well as 14 cases directed by this Court. Petitioners' pleas for premature release did not find favour with the SRB and were rejected.
8. At this juncture, it would be relevant and pertinent to mention that Petitioners had prior to filing this petition, approached the Supreme Court by way of Special Leave Petition under Article 136 of the Constitution of India being '*SLP (Crl.) No.5195/2024 titled as Bijender v. State (Govt. of NCT of*



Delhi) and '*SLP (Crl.) Diary No.15230/2024 titled as Mohd. Mehfooz & Ors. v. State (Govt. of NCT of Delhi)*'. Supreme Court vide order dated 19.04.2024 disposed of the SLPs granting liberty to the Petitioners to file appropriate proceedings before the High Court. Three weeks' time was granted to the Petitioners, who were already released on furlough and had not surrendered, to surrender so as to enable them to file appropriate proceedings before the High Court.

9. The primordial contention raised on behalf of the Petitioners is that the fallacy in rejecting the case of the Petitioners for premature release is that the Respondent has considered their cases under the 2018 Rules whereas their cases ought to have been considered under the Policy dated 16.07.2004 (hereinafter referred to as '2004 Policy') issued by the Respondent. In this context and in order to support the legal submission, learned counsel for the Petitioners relies on the judgment of the Supreme Court in ***Joseph v. State of Kerala and Others, 2023 SCC OnLine SC 1211***, wherein 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 Petitioners is that the impugned order has been passed mechanically, without any application of mind by the members of SRB. While considering the cases of the Petitioners for premature release, the SRB ought to have considered the parameters/factors enumerated in paragraph 3.1 of 2004 Policy, which are as follows:-

“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.”

As the SRB treaded on a wrong path by considering the case of the Petitioners 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 Petitioners requires to be considered afresh under the 2004 Policy. On the question of extension of furlough period, learned counsel for the Petitioners fairly states that the Supreme Court has extended the time for the Petitioners to surrender upto 10.05.2024 and Petitioners undertake to surrender on the said date.

12. Ms. Rupali Bandhopadhyay, 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 Petitioners can be considered afresh by the SRB. It is however urged that Petitioners must be bound down to the undertaking that they shall surrender on 10.05.2024.

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

14. The only question that arises for consideration before this Court in the present petition is whether the case of the Petitioners for premature release was required to be considered under the 2004 Policy or the 2018 Rules. As far as this issue is concerned, it need not detain this Court as the legal 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 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 petition, Petitioner No. 1 was convicted on 12.05.2011, Petitioner No. 2 was convicted on 26.10.2008, Petitioner No. 3 was convicted on 10.01.2008, Petitioner No. 4 was convicted on 20.11.2000, Petitioner No. 5 was convicted on 07.05.2014 and Petitioner No. 6 was convicted by this Court in 2008 *albeit* acquitted by the Trial Court in 1996. In view of the



judgment of the Supreme Court, there is not the slightest of scintilla of doubt that it is the remission policy which is applicable on the date of conviction will apply for considering the cases for premature release. Going by the respective dates of conviction of the Petitioners, save and except, Petitioner No. 4, 2004 Policy will be applicable and will govern the consideration of Petitioners cases by the SRB. Insofar as Petitioner No. 4 is concerned, he was convicted on 20.11.2000 at which point in time Government Orders were in place for deciding the cases of premature release but nevertheless going by the dictum of the Supreme Court, consideration will have to be accorded by taking into consideration whichever policy is more liberal i.e. the Government Orders or the 2004 Policy. Indisputably, cases of all the Petitioners have been considered under the 2018 Rules, which, in my view, is an action clearly contrary to and in the teeth of the judgment of the Supreme Court in *Joseph (supra)* and cannot be sustained. In view of the aforesaid, the impugned minutes of meeting of the SRB dated 30.06.2023 qua the Petitioners deserve to be set aside and cases of Petitioners No. 1 to 3, 5 and 6 require to be considered for premature release afresh under the 2004 Policy and case of Petitioner No. 4 will be considered under the GO applicable in the year 2000 or the 2004 Policy, whichever is more liberal.

17. There is also merit in the contention of the Petitioners that while considering their cases 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 Petitioners that while bestowing consideration on their cases for premature release, SRB will have to take into account the factors enumerated in paragraph 3.1, i.e., (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) 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. Accordingly, the present petition is disposed of, setting aside the impugned minutes of meeting and the decision contained therein dated



30.06.2023 qua the Petitioners, with a direction to the Respondent to consider afresh the cases of the Petitioners for premature release, as aforementioned. 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. Undertakings on behalf of the Petitioners that they shall surrender on 10.05.2024 following the directions of the Supreme Court are taken on record.

19. Pending applications stand disposed of.

20. 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 cases of the Petitioners for premature release, in accordance with the 2004 Policy in case of Petitioners No. 1 to 3, 5 and 6 and in accordance with the GO/2004 Policy, whichever is more liberal, in case of Petitioner No. 4 as well as keeping in the backdrop the facts and circumstances of the cases. Liberty is granted to the Petitioners to take recourse to remedies available in law, in case of any surviving grievances.

21. Copy of the judgment be forwarded to the concerned Jail Superintendent, for information.

JYOTI SINGH, J

APRIL 25, 2024/shivam