



\$~8

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

+ **W.P.(CRL) 3800/2023 & CRL.M.A. 35350/2023**

OMBIR

.....Petitioner

Through: Mr. Utkarsh Singh, Advocate.

versus

STATE (GOVT. OF NCT OF DELHI)

.....Respondent

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

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

27.08.2024

%

1. The present Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C., 1973"*) has been filed on behalf of the petitioner seeking direction to the respondent to consider his case for premature release under the Policy dated 16.07.2004.
2. It is submitted that the petitioner has undergone more than 15.6 years of actual sentence and 18 years with remission. The petitioner despite being entitled for premature release under the Policy dated 16.07.2004 passed by the Hon'ble Lieutenant Governor of NCT of Delhi, has been languishing in jail which amounts to nothing but illegal detention.
3. It is further submitted that as per the Remission Policy, the only requirement for consideration of premature release in normal cases of life



imprisonment covered by the provisions of Section 433A of Cr.P.C., 1973 is that the convicts shall be eligible to be considered for premature release from the prison after completing sentence of 14 years of actual imprisonment. The said Policy also contemplates certain categories of convicted persons, whose premature release shall be considered only after having undergone 20 years, including remission. However, the said category is not applicable to the petitioner.

4. The petitioner has submitted that he was convicted by the Trial Court on 24.09.1998 at the time when the Policy dated 16.07.2004 was applicable.

5. The Writ Petition (Criminal) No. 599/2023 *Ombir vs. State (Govt. of NCT of Delhi)* under Article 32 of the Constitution of India has been filed on behalf of the petitioner before the Supreme Court seeking Premature Release on the basis of Policy dated 16.07.2004, wherein the Apex Court *vide* Order dated 11.12.2023 had directed the petitioner to approach this Court. Consequently, the said petition was dismissed as withdrawn.

6. Thereafter, the present petition has been filed for premature release of the Petitioner under the Policy dated 16.07.2004.

7. **Learned Additional Standing Counsel** for the State submits that in the batch matters viz., W.P.(CRL) 72/2024 titled *Rani @ Manju vs. State (Govt.) of NCT of Delhi*, the Co-ordinate Bench of this Court has held that it is the Policy of 2004, which should be applicable.

8. **Submissions heard.**

9. In the present case, the petitioner had been convicted for the offences punishable under Sections 302/34 of Indian Penal Code, 1860 *vide* Judgment dated 24.09.1998 and Order of Sentence dated 25.09.1998 directing the petitioner to undergo imprisonment for life with a fine of Rs. 2,000/-.



10. In Joseph vs. The State of Kerala & Ors., 2023 SCC OnLine SC 1211, the Apex Court after referring to various judgments, reiterated the proposition of law that Remission Policy prevailing on the date of conviction of a convict, shall be applied in a given case, and if a more liberal policy exists on the day of consideration for the case of premature release, then such liberal policy shall apply.

11. Accordingly, in view of the decision in Joseph (supra), it is evident that the petitioner is entitled to be considered under this Policy of 2004 for his premature release.

12. The *second aspect* for consideration is that the Apex Court in its Order dated 11.12.2023 while giving liberty to the petitioner to approach this Court, had granted interim protection of four weeks. Thereafter, the present petition has been filed before this Court and the interim protection of the petitioner is being extended from time to time.

13. In the case of Rashidul Jafar @ Chota vs. State of U.P. decided *vide* W.P.(CRL) 336/2019 on 06.09.2022, whereby the interim protection of bail was extended by the Apex Court to the convicts undergoing life imprisonment who had already been released on bail pending disposal of their Application for premature release, till their case is considered afresh by SRB.

14. The similar facts as in hand, also got recently considered by the Co-ordinate Bench of this Court in Rani @ Manju (supra), whereby considering that the interim protection of two weeks had been granted to the petitioner till his petition for premature release was considered. The similar benefit was extended by another period of 15 days to the petitioner.

15. In view of the foregoing discussions, the respondent is directed to



consider the case of the petitioner for premature release in terms of Policy dated 16.07.2004 within a period of eight weeks. The SRB is directed to upload the Order forthwith, after it is approved by the Hon'ble Lieutenant Governor of NCT of Delhi.

16. The petitioner is granted two weeks' time from the date of this order, to surrender before the concerned Superintendent. It is clarified that this period of two weeks shall not be counted towards the sentence already undergone.

17. The present petition along with pending application is disposed of, in the aforesaid terms.

NEENA BANSAL KRISHNA, J

AUGUST 27, 2024

S.Sharma