



\$~6

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

Pronounced on: 07.06.2024

+ W.P.(CRL) 3840/2023& CRL.M.A. 35666-67/2023

KULDEEP & ORS.

..... Petitioners

Through: Mr. Sarthak Maggon, Adv.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr Rahul Tyagi, ASC for the State
with Ms Priya Rai, Mr Sangeet Sibou
and Mr Jatin, Advocates with SI
Pankaj Yadav, PS Nangloi.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed by four petitioners namely, Kuldeep, Mazhar-Ul-Islam, Rama Shankar and Mukesh Kumar under Article 226 of the Constitution of India read with Section 482 CrPC seeking premature release by challenging the respective orders of the even date 30.06.2023 passed by the Sentence Review Board (SRB) *vide* which the applications of the petitioners seeking premature release was rejected.

2. The facts which are relevant for the adjudication of the present Writ Petition are that the petitioners were convicted and have been sentenced to undergo life imprisonment for different offences. Appeals against conviction and sentence have been dismissed by this Court. It is averred in the petition



that as on the date of consideration of their applications seeking premature release, the petitioners had undergone following actual sentence:

S. No.	Details of Petitioner	Actual Sentence undergone	Date of rejection of application
1.	Kuldeep S/o. Raghubir Singh	18 years 03 months and 16 days	30.06.2023
2.	Mazhar-UI-Islam S/o. Wahid Ahmed	16 years and 10 days	30.06.2023
3.	Rama Shankar S/o. Bhagwati Prasad	15 years 07 months and 08 days	30.06.2023
4.	Mukesh Kumar S/o. Sanwarmal	13 years 09 months and 19 days	30.06.2023

3. Before proceeding further, it would be apt to mention that all the petitioners have been granted furlough by the competent authority and while on furlough, they before approaching this Court had approached the Hon'ble Supreme Court by filing a Writ Petition under Article 32 of the Constitution of India, which were dismissed *vide* orders dated 11.12.2023 (annexed as Annexure P-43 to the petition) and 12.12.2023 (annexed as Annexure P-44 to the petition) and granted liberty to the petitioners to approach the jurisdictional High Court. It was also ordered that the interim protection granted earlier shall continue to operate for a period of four weeks. The order dated 11.12.2023 reads as under:

"1. We are not inclined to entertain present petitions in the extraordinary jurisdiction under Article 32 of the Constitution of India.



2. *These writ petitions are, accordingly, dismissed with liberty to approach the jurisdictional High Court.*
3. *The interim protection granted earlier by this court shall continue to operate for a period of four weeks from today.”*
4. The primary ground urged on behalf of the present petitioners is that impugned orders dated 30.06.2023 *vide* which the applications of the petitioners seeking premature release were rejected have been passed in a mechanical manner and without taking into account that the present petitioners are first time offenders and were never involved in any case of any nature except the present case. It is further submitted that the conduct of the petitioners has been satisfactory and that they have never misused or abused the grant of parole/furlough maintaining excellent conduct during incarceration and same is reflective of the readiness of the petitioners to be reintegrated into the society.
5. It is further urged that the petitioners being ideal convicts fulfil all objective criteria enumerated by the Sentence Review Board (SRB) as laid down under the order of 2004, as well as, the Delhi Prison Rules, 2018. He also contends that the SRB while rejecting the applications of the petitioners 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 petitioners; 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 petitioners' support to Jail administration in smooth functioning of the prison.
6. He submits that impugned orders of the SRB are stereotyped orders which have rejected the pre-mature release of the petitioners in general terms without adverting to the facts of the case. It is submitted that the SRB



has failed to provide sufficient, reasoned and fair reasoning for passing the order. He invites the attention of the Court to Rules 1256 and 1257 of the Delhi Prison Rules, 2018 to contend that the said rules provide that all the authorities vested with the power to consider the case of the convicts for premature release have to provide reasons for their decision.

7. The attention of the Court was also drawn to Rules 1251 under the Delhi Prison Rules to contend that while considering the case of convicts who have been sentenced to life imprisonment, the relevant factors to be taken into account are (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) *Socio-Economic condition of the Convict's family*, which factors have not been considered while rejecting the applications of the petitioners.

8. *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.

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

10. Since the challenge has also been made to the impugned orders of rejection of petitioner's premature release, at this juncture apt would it be to reproduce one such order in relation to petitioner no. 1, which reads thus:

Minutes of SRB Meeting held on 30th June, 2023

89. Kuldeep S/O SH. RAGHUBIR SINGH- AGE-39 YRS.

Kuldeep S/o Sh. Raghbir Singh is undergoing life imprisonment in case FIR No.168/2004, U/S 302/364 IPC, P.S. Kanjhawala, Delhi for murder of his wife on matrimonial differences.



The convict has undergone:

Imprisonment of 18 years, 03 months & 16 days in actual and 22 years, 07 months and 05 days with remission. He has availed I. Bail 01 time, Parole 06 times and Furlough 16 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 crime was committed i.e. murder of his wife on matrimonial differences, the gravity, perversity, brutality & heinousness of the crime, objection by Police etc., the Board unanimously **REJECTS** premature release of convict Kuldeep S/o Sh. Raghubir Singh at this stage.*

11. A perusal of the impugned order shows that the SRB while rejecting the premature release of the petitioner has only considered- (i) the manner in which the crime was committed, (ii) the gravity of the offence, and (iii) the perversity of the crime. 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. Under the policy of 2004, three factors which were required to be considered while taking a decision on the petitioner's application for premature release are as under:

- (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;
- (c) Socio-economic condition of the convict's family.



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 on the non-consideration or non-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 petitioners seeking exemption from surrendering till the time the next SRB considers their case afresh is concerned, the same cannot be acceded to in view of the judgment of this Court in **Rani @ Manju v. State (Govt.) of NCT of Delhi**,² wherein this Court has held that the right to claim furlough, and conditions when the same can be granted, flows from the Delhi Prison Rules, 2018 and furlough can only be granted in accordance with the said Rules. It was further noted that the Court has no competence to issue a direction contrary to law and to act in contravention of a statutory provision and granting exemption to the petitioners from surrendering shall be in violation to the Rules. The relevant paragraphs of the judgment read as under:

25. *In so far as the extension of interim protection granted by the Supreme Court vide order dated 11.12.2023 for a period of four weeks, is concerned, it may be noticed that the said protection was granted only for a period of four weeks while dismissing the writ petitions filed by the petitioners therein only to enable them to approach the jurisdictional High Court.*

26. *Furthermore, the petitioner as a convict is entitled for the grant of furlough in accordance with the Delhi Prison Rules, 2018, which have been framed by the Govt. of the NCT of Delhi in the exercise of the powers conferred by Section 71 of the Delhi Prisons Act, 2000.*

27. *Rule 1199 of Delhi Prison Rules, 2018 defines Furlough to mean release of a petitioner for a short period of time after a gap of certain qualified numbers of years of incarceration by way of motivation for maintaining good conduct and to remain disciplined in the prison. This is purely an incentive for good conduct in the prison. Therefore, the period spent by the*

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

² 2024 SCC OnLine Del 351



prisoner outside the prison on furlough shall be counted towards his sentence. However, if the prisoner commits an offence during the period, he is released on furlough then the period will not be counted as sentence undergone.

XXXX

XXXX

XXXX

XXXX

30. *As noted above, the petitioner was released on furlough vide order dated 10.11.2023 for a period of two weeks but the petitioner did not surrender to the Superintendent, Central Jail No.6, Tihar, New Delhi on the expiry of her period of release on furlough, which was one of the condition subject to which she was released. Instead, she filed a writ petition before the Supreme Court seeking her pre-mature release on the basis of Policy dated 16.07.2004, which came to be dismissed by the Supreme Court vide order dated 11.12.2023.*

31. *Clearly, a right to claim furlough, the eligibility therefor, the total period and the spells in a conviction year, in which the same can be granted, flows from the Rules. As per the Rule 1221, a convict can be granted furlough for seven (07) weeks in three spells in a conviction year with maximum of 03 weeks in one spell. It is settled legal proposition that neither the court nor any tribunal has the competence to issue a direction contrary to law and to act in contravention of a statutory provision. 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.³ Further, unless the existence of legal right of a citizen and corresponding legal duty by the State or any public authority, could be read in the provision, a mandamus cannot be issued to enforce the same.*

32. *Accordingly, the grant of furlough or extension thereof has to be in accord with the Rules. No rule has been pointed out and there appears to be none which provides for continuation of furlough granted to the petitioner till the time her case for premature release is considered by the SRB. A somewhat similar*

³ Maharishi Dayanand University v. Surjeet Kaur, (2010) 11 SCC 159



contention that the convict be released on parole till such time as the name of the convict is not considered by the authorities and approved for his premature release, was rejected by this Court in “Shashi Shekhar @ Neeraj vs. State of the NCT of Delhi & Ors”, in W.P. (Crl.) 1311/2016. The relevant para of the said decision reads as under:

*“26. The petitioner seeks his release on parole till such time as his name is not considered by the authorities and approved for his premature release. Such a relief, in my view, cannot be granted as it would tantamount to doing indirectly, what the Court cannot directly. The Supreme Court in **Rashmi Rekha Thatoi and Anr. v. State of Orissa and Odrs.**, (2012) 5 SCC 690 while dealing with an order passed by the High Court under section 438 CrPC observed as follows:*

*“37. In this regard it is to be borne in mind that a court of law has to act within the statutory command and not deviate from it. It is well-settled proposition of law what cannot be done directly, cannot be done indirectly. While exercising a statutory power a court is bound to act within the four corners thereof. The statutory exercise of power stands on a different footing than exercise of power of judicial review. This has been so stated in **Bay Berry Apartments (P) Ltd. v. Shobha** (2006) 13 SCC 737 and **U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey** (2006) 1 SCC 479.”*

33. *The direction in **Rashidul Jafar @ Chota** (supra) that the interim bail already granted shall continue to remain in operation until the disposal of the application for premature release was passed in the facts of that case. In the said case, 512 convicts undergoing a sentence of imprisonment for life in the State of Uttar Pradesh had sought premature release. The Supreme Court considering the policy for premature release in the State of U.P issued certain peremptory directions including a*



direction that any convict undergoing life imprisonment who has already been released on bail by the orders of the Hon'ble Supreme Court, in his case the order granting interim bail shall continue to remain in operation until the disposal of the application for premature release. Clearly, the direction given was that the interim bail already granted by the Hon'ble Supreme Court shall continue to remain in operation. However, in the present case no bail was granted by the Court, therefore, the question of continuation of the same by the Court would not arise. That apart, present is a case where furlough was granted by the competent authority for a period of two weeks under the Delhi Prison Rules, 2018, therefore, no direction can be given to extend the same pending consideration of petitioner's case for pre-mature release by the SRB, contrary to the rules, thus, the benefit of the direction in the said case will not enure to the petitioner.

34. 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 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 petitioners, 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.

35. The petitioners are, however, granted two weeks' time from today to surrender before the concerned Jail Superintendent.

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

37. The petition stands disposed of.

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



2024 : DHC : 4727



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

VIKAS MAHAJAN, J

07 JUNE, 2024/dss