

# Hitesh @ Bavko Shivshankar Dave vs The State Of Gujarat on 24 January, 2023

**Author: Pamidighantam Sri Narasimha**

**Bench: Pamidighantam Sri Narasimha**

IN THE SUPREME COURT OF INDIA  
CRIMINAL ORIGINAL JURISDICTION

Writ Petition (Criminal) No 467 of 2022

Hitesh @ Bavko Shivshankar Dave

.... P

Versus

State of Gujarat

....Re

## ORDER

1 On 16 July 2002, the petitioner was convicted, with the co-accused, of an offence punishable under Section 302 of the Indian Penal Code 1860 and sentenced to suffer rigorous imprisonment for life.

2 During the pendency of the criminal appeal before the High Court, he was granted interim bail for a period of three weeks on 19 January 2005. The petitioner, however, absconded and was arrested on 30 March 2010. The petitioner was thereupon punished by forfeiting four furloughs on 9 August 2011. The appeal against the conviction was dismissed on 21 August 2009. Of the three co-accused, one was released prematurely in 2017. 3 The petitioner has sought premature release.

4 Following the law laid down by this Court, in determining the entitlement of a the conviction would have to be the determinative factor. However, if the policy which was prevalent on the date of the conviction is subsequently liberalised to provide more beneficial terms, those should also be borne in mind. 5 On 9 July 1992, the Government of Gujarat formulated a policy for premature release of prisoners convicted and sentenced to life imprisonment on or after 18 December 1978, after completing fourteen years of actual imprisonment provided the behaviour of the prisoner has been satisfactory. 6 On 19 September 2020, the Jail Advisory Board recommended the premature release of the petitioner, taking note of the fact that his behaviour in the jail had been satisfactory, the petitioner had undertaken skill development training and had also prevented a jail break by some prisoners. The Welfare Officer also arrived at the conclusion that the petitioner would not commit any crime in the future.

7 The State Government rejected the case for premature release by an order dated 4 November 2020 on the ground that the petitioner was involved in a case involving a murder over a money dispute and it was not in the interest of the society to release the petitioner.

8 In an earlier writ petition under Article 32 of the Constitution of India taken up by this Court, by an order dated 18 April 2022, the Court directed that the case of the petitioner for premature release should be considered in terms of the policy dated 9 July 1992. The State Government has once again rejected the application of the petitioner for premature release, by an order dated 6 September 2022.

9 We have heard Mr Rishi Malhotra, counsel appearing on behalf of the petitioner, and Ms Swati Ghildiyal, counsel appearing on behalf of the State of Gujarat. 10 The State Government has filed a counter affidavit. The principal objection to the premature release of the petitioner is that, while he was released on interim bail for a period of three weeks on 19 January 2005, he absconded for a period of five years until he was arrested on 30 March 2010. This, it is urged, indicates a lack of respect for the law. However, it also emerges from the record that the petitioner was punished for his conduct by depriving him four furloughs. 11 The facts which are not in dispute in the Court are as follows:

(i) The policy of the State Government dated 9 July 1992, which was prevalent on the date of the conviction, facilitates the consideration of the case of a life convict for the grant of premature release after completing fourteen years of actual sentence;

(ii) The petitioner has undergone fifteen years and six months of actual sentence (nineteen years with remission);

(iii) A co-accused was granted premature release in 2017;

(iv) The Jail Advisory Board has issued a positive report on 19 September 2020; and

(v) The ground contained in the orders dated 4 November 2020 and 6 September 2020 continues to be one and the same, namely, that the petitioner has been sentenced to life imprisonment in a murder case over a money dispute.

12 In this backdrop, Mr Rishi Malhotra submits that if the ground which has been taken into consideration by the State Government for declining premature release continues to hold the field, the petitioner would effectively be barred from seeking premature release at any point of time though for the same offence the co-accused was granted premature release. Moreover, it has been submitted that though the petitioner absconded for a period of five years between 2005 and 2010, he has been deprived of four furloughs for his misconduct and, hence, there is no reason why the petitioner should not be considered for premature release on the same basis as the co-accused since the policy of 1992 does not contain any such restriction. 13 Apart from the above circumstances, counsel appearing on behalf of the petitioner has relied on the policy of the State Government dated 25 January 2017, in terms of which the following provision was made for the release of prisoners on

the occasion of 26 January 2017. Clause (c) of the policy reads as follows:

“(c) In respect of prisoners convicted for life imprisonment, who have not absconded from parole/furlough/interim bail etc for more than three days, last ten years, and have undergone 12 years of actual imprisonment including set-off as on 26th January, 2017, full remission of the remaining period is granted.”

14 Ms Swati Ghildiyal, on the other hand, submitted that the policy of 25 January 2017 was a one time measure on the occasion of Republic Day on 26 January 2017.

15 Be that as it may, we are of the considered view that the circumstances which have been set out in the earlier part of this order should merit fresh consideration by the State Government. Since the grant of premature release is essentially an executive function relatable to Article 161 of the Constitution, we are of the view that it would be appropriate to direct that the matter should be re-evaluated bearing in mind all the relevant circumstances some of which have been noted above. There is merit in the submission which has been urged on behalf of the petitioner that if the fact that the petitioner was involved in a murder, following a money dispute, is held to be a ground for rejection of his application for premature release, he would be effectively debarred from seeking premature release at any point of time in the future though the co-accused involved in the same crime have since been released. It merits emphasis that this is not a ground for rejection in the policy of 9 July 1992. 16 In the circumstances, we direct the competent authority of the State Government to reconsider the application of the petitioner for the grant of premature release after duly applying its mind to the relevant facts and circumstances, including those which have been noted above. The application shall be considered in accordance with the policy document dated 9 July 1992 which held the field on the date of the conviction. This exercise shall be completed within a period of two months.

17 The petition is accordingly disposed of.

18 Pending application, if any, stands disposed of.

.....CJI.

[Dr Dhananjaya Y Chandrachud] .....J. [Pamidighantam Sri Narasimha] .....J. [J B Pardiwala] New Delhi;

January 24, 2023

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ITEM NO.5

COURT NO.1

SECTION X

S U P R E M E C O U R T O F  
RECORD OF PROCEEDINGS

I N D I A

HITESH @ BAVKO SHIVSHANKAR DAVE

Petitioner(s)

VERSUS

THE STATE OF GUJARAT

Respondent(s)

(WITH IA No. 177968/2022 - EXEMPTION FROM FILING O.T., IA No. 177969/2022 - GRANT OF BAIL, IA No. 183544/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES) Date : 24-01-2023 This petition was called on for hearing today. CORAM :

HON'BLE THE CHIEF JUSTICE HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA HON'BLE MR. JUSTICE J.B. PARDIWALA For Petitioner(s) Mr. Rishi Malhotra, AOR For Respondent(s) Ms. Swati Ghildiyal, AOR Ms. Devyani Bhatt, Adv.

UPON hearing the counsel the Court made the following O R D E R 1 The petition is disposed of in terms of the signed order. 2 Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)

DEPUTY REGISTRAR

(SAROJ KUMARI GAUR)

ASSISTANT REGISTRAR

(Signed order is placed on the file)