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RAJKUMAR

v.

THE STATE OF UTTAR PRADESH

Miscellaneous Application No 2169 of 2022

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In

(Writ Petition (Criminal) No 36 of 2022)

FEBRUARY 06, 2023

C [DR. DHANANJAYA Y CHANDRACHUD, CJI,
PAMIDIGHANTAM SRI NARASIMHA AND
J B PARDIWALA, JJ.]

- Uttar Pradesh Prisoners (Release on Probation) Act 1938 –
Uttar Pradesh Prisoners (Release on Probation) Rules 1938 –
Standing Policy formulated on 01.08.2018, amended on 27.05.2022*
- D – *Premature release of persons sentenced to suffer life imprisonment on conviction under IPC, directions issued by Supreme Court in Rashidul Jafar case – Despite the said judgment and the convicts having fulfilled the conditions of eligibility for the grant of premature release, cases were not being dealt with in terms of the policy –*
- E *Held: The State having formulated Rules and a Standing Policy for deciding cases of premature release, it is bound by its own formulations of law – It is not open to the State to adopt an arbitrary yardstick for picking up cases for premature release – It must strictly abide by the terms of its policies – Each case for premature release has to be decided on the basis of the legal position as it stands on*
- F *the date of the conviction subject to a more beneficial regime being provided in terms of a subsequent policy determination – The provisions of the law must be applied equally to all persons – Out of the 50 prisoners whose cases have been brought to the notice of Supreme Court, all the pending cases be disposed of on or before 30.04.2023 in terms of the directions issued – Compliance report be filed on affidavit by the Director General of Prisons – Miscellaneous Application be listed for verifying compliance – Code of Criminal Procedure 1973 – ss.433A, 423 – Constitution of India – Article 161.*
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Rashidul Jafar @ Chota v. State of Uttar Pradesh & Anr. Writ Petition (Criminal) No 336 of 2019; State of Haryana v. Jagdish (2010) 4 SCC 216 : [2010] 3 SCR 716; State of Haryana v. Raj Kumar (2021) 9 SCC 292 – relied on.

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<u>Case Law Reference</u>		B
[2010] 3 SCR 716	relied on	Para 5
(2021) 9 SCC 292	relied on	Para 5

CRIMINAL APPELLATE JURISDICTION: Miscellaneous Application No. 2169 of 2022 in Writ Petition (Criminal) No. 36 of 2022. C

From the Judgment and Order dated 11.03.2022 in W.P. (Crl.) No. 36 of 2022 of the Supreme Court of India.

Nagendra Singh, Ms. Akansha, Ashish Pandey, Naman Raj Singh, Dr. Amardeep Gaur, M/s V. Maheshwari & Co., Advs. for the Petitioner.

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Vishnu Shankar Jain, Rishi Malhotra, Advs. for the Respondent.

The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, CJI

1. On 6 September 2022, this Court in its judgment in *Rashidul Jafar @ Chota Vs State of Uttar Pradesh & Anr*¹ issued a slew of directions governing the premature release of persons sentenced to suffer imprisonment for life consequent upon their conviction under diverse provisions of the Indian Penal Code.

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2. Following the above decision, this Court has been repeatedly moved in petitions under Article 32 of the Constitution of India for securing the premature release of individual convicts because their cases for premature release have not been considered.

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3. Under the Uttar Pradesh Prisoners (Release on Probation) Act 1938, cases for premature release of prisoners sentenced to imprisonment for life and Writ Petition (Criminal) No 336 of 2019 undergoing the sentence in the prisons of the State are considered under Form ‘A’. The State of Uttar Pradesh formulated the Uttar Pradesh Prisoners (Release on Probation) Rules 1938. Rule 4 of the Rules is in the following terms :-

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¹ Writ Petition (Criminal) No. 336 of 2019

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- A “**4. Eligibility for release.**—Any prisoner other than a prisoner specified in Rule 3, may be eligible for consideration by the State Government for release on licence—
- (i) if he is a prisoner to whom Section 433-A of the Code of Criminal Procedure, 1973 applies and has served imprisonment for a total period of fourteen years;
- B (ii) if he is a prisoner sentenced to imprisonment for life to whom Section 433-A of the Code of Criminal Procedure, 1973 does not apply and has served imprisonment for a total period of fourteen years with remissions; and
- C (iii) in any other case if he has served one-third without remissions of the period of imprisonment to which he was sentenced.”
- The process of premature release was, thus, being considered in terms of the above provision.
- D 4. Apart from the above provisions, a ‘Nominal Roll’ of prisoners is prepared in terms of Section 432 read with Section 433A of the Code of Criminal Procedure 1973² and paragraph 198 of the Uttar Pradesh Jail Manual (subsequently replaced by Para 180 of the Jail Manual 2022). Moreover, an ‘Infirmity Roll’ of prisoners is prepared in terms of Section 432 of the CrPC read with paragraphs 195, 196 and 197 of the Uttar Pradesh Jail Manual (replaced by paragraphs 177 to 179 of the Jail Manual 2022) governing the premature release of sick and disabled persons detained in prisons in the State. Mercy petitions presented by convicts or by their relatives, as the case may be, under Article 161 of the Constitution are also considered by the Governor of the State. The
- E State of Uttar Pradesh has formulated a Standing Policy for premature release of prisoners sentenced to suffer imprisonment for life covered by Article 161 of the Constitution of India. The State Government formulated a Standing Policy on 1 August 2018. The policy was subsequently amended on 27 May 2022.
- G 5. In several decisions of this Court, it has been held that the case of a convict for premature release is governed by the applicable policy on the date of conviction [*State of Haryana Vs Jagdish*³ and *State of Haryana Vs Raj Kumar*⁴].

² “CrPC”

³ (2010) 4 SCC 216

H ⁴ (2021) 9 SCC 292

6. The Standing Policy of the State of Uttar Pradesh as formulated on 1 August 2018 (as amended in 2021) contained a prohibition on the grant of premature release to convicts who had not completed the age of 60 years. The validity of the restriction was challenged before this Court in a batch of cases under Article 32 of the Constitution which eventually led to the judgment of *Rashidul Jafar* (*supra*). In the subsequent policy dated 27 May 2022, the bar on considering cases for premature release before a convict attains the age of 60 years stand lifted. This Court has hence directed that while, as a general principle, the policy which was in existence on the date of the conviction would govern the consideration of each case for premature release, in the event that a more liberalized policy is instituted subsequently, the case should be considered on the basis of the more liberalised provision.

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7. Despite the judgment of this Court in *Rashidul Jafar*, cases were being repeatedly brought to this Court under Article 32 of the Constitution where despite the convict having fulfilled the conditions of eligibility for the grant of premature release, cases were not being dealt with in terms of the policy.

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8. On 5 January 2023, while entertaining the present case, this Court issued a direction requiring the Director General of Police to file an affidavit explaining the following :

- “(i) The steps which have been taken in pursuance of the decision of this Court in *Rashidul Jafar @ Chota* (*supra*) for considering cases for pre-mature release and the institutional arrangements which have been put into place;
- (ii) How many convicts are eligible for being considered for pre-mature release, district-wise, in the State of Uttar Pradesh;
- (iii) How many cases have been considered for pre-mature release since the decision of this Court in *Rashidul Jafar @ Chota* (*supra*);
- (iv) How many cases remain to be considered; and
- (v) The time period within which the cases shall be considered.”

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9. In pursuance of the above direction, an affidavit has been filed by the Director General of Prisons. Besides advertizing to the regime formulated in the State of Uttar Pradesh (as noted in the earlier part of

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- A this order), the affidavit sets out District-wise data of convicts eligible for being considered for premature release and the number of cases pending consideration. As of 31 December 2022, there are 1,15,163 prisoners in the State of Uttar Pradesh out of whom 88,429 are under trial prisoners. There are 26,734 convicts of whom 16,262 are undergoing a sentence of life imprisonment. The affidavit states that 2,228 convicted prisoners have completed 14 years of actual imprisonment (in terms of the Rules of 1938 which were prevalent on the date of the conviction) and are eligible for being considered for premature release. The following statement indicates the stage at which these cases are pending consideration for the grant of premature release.

C	“S No	Particulars of eligible cases under consideration at different level	Number
	1	Cases pending under Form-A	1307
	2	Cases pending under Nominal Roll	99
	3	Cases pending under the Standing Policy	31
D	4	Cases pending under the Standing Policy	31
	5	Cases pending consideration under more than one *head: Form-A/Nominal Roll/Standing Policy/ Mercy Petition	760
	TOTAL		2228”

- E 10. The affidavit filed by the Director General of Prisons indicates that in the preceding five years, 3,729 prisoners have been released in the State of Uttar Pradesh under various arrangements for premature release. Moreover, it has been stated that in terms of the amended policy, prisoners eligible for premature release are released on ten annual occasions, namely :

- F “Republic Day (26th January), Women’s Day (08th March), World Health Day (07th April), Labour Day (01st May), World Yoga Day (21st June), Independence Day (15th August), Teacher’s Day (05th September), Gandhi Jayanti (02nd October), International Tolerance Day (16th November) and International Human Rights Day (10th December).”

Between 6 September 2022 and 31 December 2022, the cases of 731 convicts were considered for premature release.

- H 11. The specific grievance which has been brought before this Court pertains to 50 prisoners. In respect of these 50 prisoners, the

tabulated statement annexed to the affidavit indicates the status of the consideration of those cases :

“SI No	PARTICULARS IN NUMBVERS (For premature release)	
1	Total No. of prisoners released	03
2	No. of cases pending District Magistrate Level	05
3	No. of cases pending at Headquarters, Prisons *(Out of these 25 prisoners, the Report for premature release of 21 prisoners is being sent to the State Government after being considered by the meeting of the Probation Board on 24/25.01.2023 and the Reports of 4 prisoners are pending consideration at the Prisons Headquarter level)	25*
4	No. of cases pending at the level of State Government	12
5	No. of cases rejected by the State Government	02
6	No. of ineligible prisoners (14 years of mandatory imprisonment not completed)	01
7	Acquitted by Apex Court	01
8	Release on Completing Sentence	01
TOTAL		50”

12. Mr Rishi Malhotra, counsel has been requested by this Court to assist as *Amicus Curiae*. The note submitted by the *Amicus Curiae* indicates that the basic problem lies in the State Government adopting a pick and choose policy. The *Amicus Curiae* submits that though the conviction by the trial court is prior to 1 August 2018 (the date on which the Standing Policy was originally notified), instead of applying the Uttar Pradesh Prisoners Act, 1938 in terms of which a convict who has undergone 14 years actual sentence is eligible for premature release, the authorities await the convict undergoing an actual sentence of 16 years so as to consider the case of premature release in terms of the subsequent policy.

13. The State having formulated Rules and a Standing Policy for deciding cases of premature release, it is bound by its own formulations of law. Since there are legal provisions which hold the field, it is not open to the State to adopt an arbitrary yardstick for picking up cases for premature release. It must strictly abide by the terms of its policies bearing in mind the fundamental principle of law that each case for premature

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- A release has to be decided on the basis of the legal position as it stands on the date of the conviction subject to a more beneficial regime being provided in terms of a subsequent policy determination. The provisions of the law must be applied equally to all persons. Moreover, those provisions have to be applied efficiently and transparently so as to obviate the grievance that the policy is being applied unevenly to similarly circumstanced persons. An arbitrary method adopted by the State is liable to grave abuse and is liable to lead to a situation where persons lacking resources, education and awareness suffer the most.

- 14. Out of the 50 persons whose cases have been brought to the notice of this Court, as stated earlier, three have been released, one has been acquitted and one has been released on completing the sentence. In the case of two persons, their premature release has been rejected. One person is stated to be ineligible for premature release not having completed fourteen years of mandatory imprisonment. Of the remaining pending cases, five cases are pending at District Magistrate level; twenty five are pending at the Headquarters (Prisons) while twelve are pending with the State Government.

- 15. All the pending cases shall be disposed of on or before 30 April 2023 in terms of the above directions and a report of compliance shall be filed before this Court on affidavit by the Director General of Prisons.

- 16. The Miscellaneous Application shall be listed for verifying compliance on 4 May 2023.

Divya Pandey
(Assisted by : Roopanshi Virang, LCRA)

Directions issued.