

Shyam Narain vs State Of Nct Of Delhi on 25 January, 2024

\$~42

*

IN THE HIGH COURT OF DELHI AT NEW

+

W.P. (CRL) 80/2024 & CRL.M.A. 662/2

SHYAM NARAIN

STATE OF NCT OF DELHI

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN
ORDER

%

25.01.2024

W.P. (CRL) 80/2024

1. The present petition has been filed under Article 226 of the Constitution of India read with Section 482 CrPC seeking the following relief:-

" a. Allow the present petition in favour of the Petitioner by passing appropriate orders/ directions as well as issuance of writs in the nature of mandamus or certiorari or any other applicable writ and/ or directions or order to the Respondent thereby allowing premature release of the Petitioner by quashing of the order/minutes of the Competent Authority/Sentence Review Board dated 30.06.2023 and any such further minutes/orders rejecting premature release to the Petitioner;"..

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2024 at 22:56:54

2. Issue notice. The learned Standing Counsel for the State accepts notice.

3. Let Status Report be filed before the next date.

4. List on 12.02.2024.

CRL.M.A. 662/2023 (seeking exemption from surrender to the petitioner)

5. This application has inadvertently been shown as disposed of vide order dated 08.01.2024 presuming it to be a formal application like CRL.M.A. 663/2023 seeking exemption from filing the certified true copy of the annexures etc., whereas by way of present application the petitioner has sought an interim relief seeking grant of exemption from surrender to the petitioner before the Jail Authorities.

6. On an oral request of the learned counsel for the petitioner, the application is restored to its original number and submissions of the learned counsel have been heard on the aspect of said interim relief.

7. Issue notice. The learned Standing Counsel for the State accepts notice. With the consent of parties the application is taken up for disposal without calling upon the State to file a reply to the application.

8. The learned counsel for the petitioner submits that the petitioner was convicted for the offence under Section 376(2)(F) IPC in connection with case FIR No. 524/2003 registered at Police Station Kalyanpuri, Delhi and was sentenced to undergo life imprisonment.

9. He submits that the petitioner has already undergone more than 25 years of sentence and he places reliance on Para 3.1 of the Premature Release Policy dated 16.07.2004, to contend that the petitioner cannot be This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2024 at 22:56:54 incarcerated for a period more than 25 years including remission even in heinous offences, though his case does not even fall in the category of heinous offences as enumerated in the clause. He, therefore, contends that the petitioner is entitled to be released forthwith since he has completed 25 years of sentence which is an outer limit prescribed even in heinous offences.

10. He further submits that the petitioner was released on furlough for a period of three weeks under the Delhi Prison Rules, 2018 vide order dated 29.08.2023. Thereafter, the petitioner filed a writ petition under Article 32 of the Constitution of India before the Hon'ble Supreme Court being W.P. (Crl). 416/2023. The said petition was dismissed by the Hon'ble Supreme Court vide order dated 12.12.2023. However, the petitioner was granted exemption from surrendering for a period of four weeks so as to enable him to approach the jurisdictional High Court. The text of the said order reads as under:

"1. We are not inclined to entertain the present petition filed under Article 32 of the Constitution of India.

2. The writ petition is accordingly dismissed, relegating the petitioners to the jurisdictional High Court.

3. Interim protection granted earlier by this Court shall continue to operate for a period of four weeks from today.

4. Pending application(s), if any, shall stand disposed of."

11. It is thus, urged that the petitioner be exempted from surrendering during the pendency of the present petition as a right has accrued in favour of the petitioner to be released forthwith after completing 25 years of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2024 at 22:56:55 sentence.

12. Learned Standing Counsel, on instructions, submits that the actual sentence undergone by the petitioner is approximately 20 years and 2 months. He submits that the Policy does not contemplate any outer limit of sentence.

13. To appreciate the submission of the learned counsel for the petitioner, apt it would be to refer to the prefatory statement of the Policy, which is reproduced below for ready reference:

"No.F.18/5/94-Home (General):- In supersession of this Government's Order of even number dated 5th March 2004 and after carefully considering the proceedings dated 20th October, 1999, of the National Human rights Commission, New Delhi; and Commission's letter No. 233/20/97-98 (FC) dated 26th Sept. 2003 the Lt. Governor of NCT of Delhi; is pleased to constitute 'the National Capital Territory of Delhi Sentence Reviewing Board' to review the sentence awarded to a Prisoner undergoing Life sentence convicted by the Courts of Competent jurisdiction in Delhi and make recommendations to him about cases of premature release in appropriate cases and Order as follows"

XXXX XXXX XXXX XXXX

14. Similarly, clause 3.1 on which reliance has been placed may also be reproduced. The particular part of clause 3.1 on which emphasis has been laid by the learned counsel for the petitioner has been highlighted and underlined. Clause 3.1 of the policy reads as under:

"Eligibility for premature release 3.1 Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2024 at 22:56:55 provisions of Section 433 Cr.PC 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 year incarceration;
- b) The possibility of reclaiming the convict as a useful member of the society; and
- d) Socio-economic condition of the convict's family.

Such convict as stand convicted of a capital offence are prescribed the total period of imprisonment to be undergone including remission, subject to a minimum of 14 years of actual imprisonment before the convict prisoner is released. Total period of incarceration including remission in such cases should ordinarily not exceed 20 years.

Certain categories of convicted prisoners undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 years including remissions. The period of incarceration inclusive of remissions even in such cases should not exceed 25 years. Following categories are mentioned in his connection.

- a) Convicts who have been imprisoned for life for murder in heinous crimes such as murder with rape, murder with dacoity, murder involving an offence under the Protection of Civil Rights Act 1955, murder for dowry, murder of a child below 14 years of age, multiple murder, murder committed This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2024 at 22:56:55 after conviction while inside the jail, murder during parole, murder in a terrorist incident; murder in smuggling operation, murder of a public servant on duty.

- b) Gangsters, contract killers smugglers, drug traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-mediation and with exceptional violence or perversity.
- c) Convicts whose death sentence has been commuted to life imprisonment."

15. It is not in dispute that the petitioner is undergoing life sentence after having been convicted by the Court of competent jurisdiction. It is axiomatic that once a person is sentenced to undergo life imprisonment unless imprisonment for life is commuted by the competent authority, he has to undergo imprisonment for the remainder of his natural life. Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years or even 30 years.¹

16. It is settled law that executive instructions cannot override the statutory provisions. It is hardly necessary to mention that if there is a statutory rule or an act on the matter, the executive must abide by that act or rule and it cannot in exercise of the executive power under Article 162 of the Constitution ignore or act contrary to that Rule or Act.²

17. Reference in this regard may also be had to the judgment of Hon'ble Supreme Court in State of Madhya Pradesh Vs Ratan Singh and Others, (1976) 3 SCC 470, relevant paragraphs of which read as under:-

Life Convict Bangal v. B.K. Srivastava : (2013)3SCC 425; Yakub Abdul Razak Memon v. State of Maharashtra : (2013)13SCC 1 B.N. Nagarajan v. State of Mysore : AIR 1966 SC 1942 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2024 at 22:56:55 "4. As regards the first point, namely, that the prisoner could be released automatically on the expiry of 20 years under the Punjab Jail Manual or the Rules framed under the Prisons Act, the matter is no longer res integra and stands concluded by a decision of this Court in Gopal Vinayak Godse v. State of Maharashtra [AIR 1961 SC 600 : (1961) 3 SCR 440 : (1961) 1 Cri LJ 736] , where the Court, following a decision of the Privy Council in Pandit Kishori Lal v. King-Emperor [AIR 1945 PC 64 : LR 72 IA 1] observed as follows:

"Under that section, a person transported for life or any other term before the enactment of the said section would be treated as a person sentenced to rigorous imprisonment for life or for the said term.

If so, the next question is whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. No such provision is found in the Penal Code, 1860, Code of Criminal Procedure or the Prisons Act.

*** A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life."

The Court further observed thus:

"But the Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, inter alia, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2024 at 22:56:55 scope of the ambit of the Act.... Under the said rules the orders of an appropriate Government under Section 401 of the Criminal Procedure Code, are a prerequisite for a release. No other rule has been brought to our notice which confers an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.

The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under Section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release."

It is, therefore, manifest from the decision of this Court that the Rules framed under the Prisons Act or under the Jail Manual do not affect the total period which the prisoner has to suffer but merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time in accordance with the rules. This Court further pointed out that the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 401 of the Code of Criminal Procedure and neither Section 57 of the Penal Code, 1860 nor any Rules or local Acts can stultify the effect of the sentence of life imprisonment given by the court under the Penal Code, 1860. In other words, this Court has clearly held that a sentence for life would enure till the lifetime of the accused as it is not possible to fix a particular period of the prisoner's death and remissions given under the Rules could not be regarded as a substitute for a sentence of This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2024 at 22:56:55 transportation for life. In these circumstances, therefore, it is clear that the High Court was in error in thinking that the respondent was entitled to be released as of right on completing the term of 20 years including the remissions. For these reasons, therefore, the first contention raised by the Learned Counsel for the appellant is well founded and must prevail.

9. From a review of the authorities and the statutory provisions of the Code of Criminal Procedure the following propositions emerge:

"(1) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Penal Code, 1860. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure;

(2) that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence no writ can be issued directing the State Government to release the prisoner;

(3) that the appropriate Government which is empowered to grant remission under Section 401 of the Code of Criminal Procedure is the Government of the State where the prisoner has been convicted and sentenced, that is to say, the transferor State and not the transferee State where the prisoner may have been transferred at his instance under the Transfer of Prisoners Act; and This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2024 at 22:56:55

(4) that where the transferee State feels that the accused has completed a period of 20 years it has merely to forward the request of the prisoner to the concerned State Government, that is to say, the Government of the State where the prisoner was convicted and sentenced and even if this request is rejected by the State Government the order of the Government cannot be interfered with by a High Court in its writ jurisdiction."

(emphasis supplied)

18. Similarly in Kartar Singh V. State of Haryana,(1982) 3 SCC 1, the Supreme Court has held as under:-

"6. Further, Section 57 IPC or the remission rules contained in Jail Manual (e.g. para 516-B of Punjab/Haryana Jail Manual) are irrelevant in this context. Section 57 IPC provides that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years for the specific purpose mentioned therein, namely, for the purpose of calculating fractions of terms of punishment and not for all purposes; similarly remission rules contained in Jail Manuals cannot override statutory provisions contained in the Penal Code and the sentence of imprisonment for life have to be regarded as a sentence for the remainder of the natural life of the convict. The Privy Council in Pandit Kishori Lal case [Pandit Kishori Lal v. King-Emperor, AIR 1945 PC 64 : 72 IA 1 : 219 IC 350 :

46 Cri LJ 626] and this Court in Gopal Godse case [Gopal Vinayak Godse v. State of Maharashtra, (1961) 3 SCR 440 : AIR 1961 SC 600 : 1961 (1) Cri LJ 736] have settled

this position once and for all by taking the view that a sentence for transportation for life or imprisonment for life must be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life. This view has been confirmed and followed by this Court in two subsequent decisions -- in Ratan Singh case [State of MP v. Ratan Singh, (1976) 3 SCC 470 : 1976 SCC (Cri) 428 : 1976 Supp SCR 552 :

1976 Cri LJ 1192] and Maru Ram case [(1981) 1 SCC 107 :

1981 SCC (Cri) 112 : (1981) 1 SCR 1196 : 1980 Cri LJ 1440] In this view of the matter life convicts would not fall within the This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2024 at 22:56:55 purview of Section 428 CrPC."

(emphasis supplied)

19. In view of the above legal position, prima facie the phrase in the policy cannot be construed as fixing an outer limit of 25 years to the life imprisonment.

20. Even otherwise from the prefatory statement of the Policy itself it prima facie appears that the policy has been framed to constitute the Sentence Review Board for making recommendations for premature release and not to rewrite the definition of "life imprisonment".

21. That apart, the phrase on which the learned counsel for the petitioner has laid emphasis, occurs in the clause which provides eligibility for premature release and a careful reading of the same makes it amply clear that for consideration for certain categories of convicted prisoners who have committed heinous crimes enumerated therein, the minimum eligibility criteria has been enhanced from 14 years to 20 years including remission but the same will not exceed 25 years inclusive of remission. Thus, the outer limit of 25 years is for the purpose of eligibility for considering a prisoner for premature release who has been sentenced for life in heinous crimes.

22. In view of the above discussion, no ground for grant of interim relief has been made out. Accordingly, the application is dismissed.

23. Keeping in view that the furlough granted to the petitioner was extended by the Hon'ble Supreme Court and subsequently by this Court, the petitioner is granted one week time from today to surrender before the concerned Jail Superintendent. It is made clear that the said period of one week will not be counted towards sentence undergone.

24. The application stands disposed of.

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2024 at 22:56:55

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

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

VIKAS MAHAJAN, J JANUARY 25, 2024/dss This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 29/01/2024 at 22:56:55