

Ghanshyam @ Javed & Ors vs State (Govt. Of Nct Of Delhi) on 9 May, 2024

Author: Anoop Kumar Mendiratta

Bench: Anoop Kumar Mendiratta

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IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P.(CRL) 1438/2024 & CRL.M.A. 13986/2024
GHANSHYAM @ JAVED & ORS.

STATE (GOVT. OF NCT OF DELHI)

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA
ORDER

% 09.05.2024 CRL.M.A. 13987/2024 & 13988/2024 Exemption allowed, subject to just exceptions.
Applications stand disposed of.

W.P.(CRL) 1438/2024 & CRL.M.A. 13986/2024

1. Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 („Cr.P.C.) has been preferred on behalf of the petitioners with the following prayers :

"A. Issue a Writ, Order or direction in the nature of Mandamus to the Respondent to consider the case of the Petitioner for premature release under the policy dated 16.7.04; B. Issue a Writ, Order or direction in the nature of Mandamus to set aside the order dated 30.6.23 passed by SRB which interalia has rejected the case of premature release of the petitioner under the Rule, 2018 which is not applicable in 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 13/05/2024 at 22:07:01 case of petitioner; or C. Issue a Writ, Order or direction in the nature of Mandamus to the State Government and direct the release of the petitioner under the policy of premature release dated 16.7.04 forthwith."

2. Issue notice. Learned ASC for the State appears on advance notice and accepts notice.

3. In brief, as per the case of petitioners, they were convicted predominantly under Section 302 IPC and sentenced to imprisonment for life in different FIRs registered during period from 1992 to 2009 as under :

(i) Petitioner No. 1 / Ghanshyam @ Javed is stated to have been convicted under Sections 302/186/353/332/34 IPC and Sections 25/27 of Arms Act and under Sections 379/411/420/468/34 IPC in FIR No. 0007/2001 registered at PS: Civil Lines and in FIR No. 0318/2000 registered at PS: Roop Nagar.

(ii) Petitioner No.2 / Niranjana Mahalik @ Jeda is stated to have been convicted under Sections 302/394/34 IPC in FIR No. 0111/2006 registered at PS: Sri Niwas Puri.

(iii) Petitioner No. 3 / Amrit Sharma @ Amit is stated to have been convicted under Sections 363/366/376(2) IPC in FIR No.0116/2009 registered at PS: Shalimar Bagh.

(iv) Petitioner No. 4 / Nain Singh is stated to have been convicted under Sections 302/34 IPC in FIR No. 0321/1992 registered at PS: Nand Nagri.

(v) Petitioner No. 5 / Amruddin @ Atiq is stated to have been convicted under Section 302 IPC in FIR No. 0357/2009 registered at PS:

Kotwali.

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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 13/05/2024 at 22:07:01 It is further the case of petitioners that as on 20.05.2024, Petitioner No. 1 / Ghanshyam @ Javed has undergone actual sentence of 23.3 years (with remission 28 years); Petitioner No.2 / Niranjana Mahalik @ Jeda has undergone actual sentence of 17.6 years (with remission 21 years); Petitioner No. 3 / Amrit Sharma @ Amit has undergone actual sentence of 15 years (with remission 18 years); Petitioner No. 4 / Nain Singh has undergone actual sentence of 15.4 years (with remission 18 years); and Petitioner No. 5 / Amruddin @ Atiq has undergone actual sentence of 14.4 years (with remission 16.6 years).

4. Learned counsel for the petitioners submits that the petitioners are governed by policy dated 16.07.2004, which was prevailing on the date of conviction of the petitioners but their cases for premature release have been wrongly considered under Delhi Prisons Rules, 2018.

5. On the other hand, learned ASC for the State opposes the petition. He submits that batch of petitions involving similar issues were decided by Co-ordinate Bench of this Court in W.P.(CRL.)

244/2024 titled as Manoj Kumar Singh vs. State (Govt. of NCT of Delhi) vide order dated 24.01.2024 and the case of the petitioner can be accordingly considered afresh in terms of policy dated 16.07.2004, as and when the next meeting of SRB is scheduled, in case the said policy is applicable to the respective petitioners.

6. The observations in Manoj Kumar Singh vs. State (Govt. of NCT of Delhi) as well as Sangeet and Another vs. State of Haryana, (2013) 2 SCC 452, have been noticed by this Court in W.P.(CRL.) 318/2024 titled as Amrit Sharma @ Amit vs. State (Govt. of NCT of Delhi) decided on 30.01.2024. The observations in paragraphs 6 to 9 may be beneficially reproduced :

"6. The observations in Manoj Kumar Singh v. State This is a digitally signed order.

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"17. In so far as the relief sought in some of the petitions to extend the furlough granted to the petitioners till the time the SRB reconsiders their cases for premature release, suffice it to say that this Court in Rani @ Manju (supra) has already taken a view that the right of a convict to claim furlough, the eligibility therefore, the total period and the spells in which the furlough could be granted in a conviction year, flows from the Delhi Prison Rules, 2018. There is no provision in the Rules which provides for continuation of furlough or parole granted to the petitioner till the time, their case for premature release is considered by the SRB and it is trite law that 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.

18. In view of the above, the petitions deserve to be partly allowed. Accordingly, the impugned orders passed by the SRB are set aside. The respondent is directed to consider afresh the cases of the petitioners for premature release, in terms of the policy dated 16.07.2004, keeping in view the observations made hereinabove, 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 Approving Authority.

19. Keeping in view that these petitions were under consideration and in case of some of the petitioners the furlough granted to them has been extended by the Hon'ble Supreme Court or by this Court as an interim measure even after its expiry and in some other cases the furlough granted to the petitioners by the competent authority is expiring either today or in a day or two, all the petitioners are granted one week time from today to surrender before the concerned Jail Superintendent. It is This is a digitally signed order.

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7. In *Sangeet and Another v. State of Haryana*, (2013) 2 SCC 452, it was observed that a convict undergoing a sentence does not have right to get a remission of sentence but he certainly does have a right to have his case considered for the grant of remission. The term of sentence spanning the life of convict can be curtailed by the Appropriate Government for good and valid reasons in exercise of its power under Section 432 of Code of Criminal Procedure, 1973 (Cr.P.C.). There has to be application of mind on the issue of grant of remission and the power of remission cannot be exercised arbitrarily.

8. Further, with regard to the remission policy which may be applicable in a given case, in *State of Haryana v. Jagdish*, (2010) 4 SCC 216, the question considered by the Three Judge Bench was whether the policy which provides for remission in sentence should be that which was existing on the date of conviction of accused or should it be the policy that existed on the date of consideration of his case for premature release by the Appropriate Authority. It was further held that the case for remission has to be considered on the strength of the policy that was existing on the date of conviction of the accused. Further, in case no liberal policy prevails on the date of consideration of the case of a convict under life imprisonment for premature release, he should be given the benefit thereof subject to Section 433-A of Cr.P.C.

9. Considering the facts and circumstances, respondent is directed to consider afresh the case of the petitioner for premature release in terms of the beneficial policy applicable to the petitioner on the date of conviction, in the next meeting of SRB. SRB shall consider the relevant factors in terms of the policy, for premature release, without being influenced by any observations made in the present order."

7. Considering the facts and circumstances, respondent is directed to consider the case of the petitioners afresh for premature release in terms of the This is a digitally signed order.

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8. Petitioners are directed to surrender in terms of the directions issued by the Hon ble Apex Court vide order dated 29.04.2024 in SLP(Crl.) 17783/2024.

Petition is accordingly disposed of. Pending applications, if any, also stand disposed of.

A copy of this order be forwarded to Superintendent Jail for information and compliance.

ANOOP KUMAR MENDIRATTA, J.

MAY 09, 2024/R This is a digitally signed order.

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