

# Gurudev vs The Government Of Nct Of Delhi And Anr on 12 February, 2024

**Author: Jyoti Singh**

**Bench: Jyoti Singh**

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
W.P.(CRL) 376/2024  
GURUDEV

THE GOVERNMENT OF NCT OF DELHI AND ANR.

Through: Mr. Rahul Tyagi,  
with Ms. Priya Rai, Mr. Sa  
Mr. Jatin, Advocates along  
Mangolpuri.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

OR

% 12.02.2024 CRL.M.A. 3443/2024 (Exemption)

1. Allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(CRL) 376/2024

3. This writ petition has been filed on behalf of the Petitioner under Articles 226 and 227 of the Constitution of India read with Section 482 Cr.P.C., challenging the order dated 21.11.2023, whereby case of the Petitioner for premature release was rejected, accepting the recommendations made by the Sentence Review Board ('SRB') in the meeting convened on 30.06.2023, applying the Delhi Prison Rules, 2018 (hereinafter referred to as the '2018 Rules'). Direction is also sought to the Respondents to release the Petitioner forthwith.

4. Issue notice.

5. Learned ASC accepts notice on behalf of the State.

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6. Petitioner was convicted under Sections 376/506 IPC in case FIR No. 652/2001 and was sentenced to life imprisonment. Petitioner is in judicial custody since 11.08.2001. On completion of 14 years of incarceration, name of the Petitioner was sent to SRB for consideration of his premature release, however, his case was not recommended. Thereafter also on a number of occasions, his case was considered, but there has been no favourable recommendation by the SRB. Lastly, Petitioner's case was considered by SRB in the meeting convened on 30.06.2023 and the Minutes of Meeting indicate that his case was rejected, taking into account reports received from the Police and Social Welfare Departments and other facts and circumstances, on the grounds that Petitioner was convicted for a heinous offence; his jail conduct is 'unsatisfactory'; he has surrendered late after availing parole and has shown non-reformative attitude etc. For the sake of completeness, it needs to be noted that as per the Minutes of Meeting of SRB, Petitioner has undergone imprisonment of 21 years 05 months and 17 days in actual on the said date and 26 years 07 months and 23 days with remission and has availed parole 05 times and furlough 15 times.

7. Learned counsel for the Petitioner inter alia contends that the fallacy in the impugned order, rejecting his case for premature release is that his case has been considered under the 2018 Rules, whereas it ought to have been considered under the Policy/Rules applicable on the date of his conviction i.e. 02.08.2003 or if a more liberal policy existed on the day of consideration for premature release, then under the latter Policy/Rules. The 2018 Rules are neither the Rules prevalent on the date of Petitioner's conviction nor more liberal than the Policy of Premature Release dated 16.07.2004 (hereinafter referred to as the '2004 Policy') and thus the This is a digitally signed order.

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8. Mr. Rahul Tyagi, learned ASC fairly states that in view of the judgments of the Supreme Court in Joseph v. State of Kerala and Others, 2023 SCC OnLine SC 1211 and of this Court in Rani v. State (Govt.) of NCT of Delhi, 2024 SCC OnLine Del 351, State has no objection in re- considering the case of the Petitioner under the 2004 Policy and in consonance with the parameters laid down therein.

9. Heard the counsel for the Petitioner and learned ASC for the State.

10. It needs no reiteration that the Supreme Court in Joseph (supra) has restated and reaffirmed the proposition of law that the remission policy prevailing on the date of conviction is to be applied in a

given case while considering the case of a convict for premature release and if a more liberal policy exists on the date of consideration, the latter would be taken into consideration and applied. In the said case, the Supreme Court was considering the case of the life convict for an offence punishable under Sections 302/392 IPC, who was in custody i.e. actual imprisonment for over 26 years and had served a sentence of over 35 years including over 08 years of remission earned and the contention of the Petitioner before the Supreme This is a digitally signed order.

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"17. ....

Analysis and conclusion A. Applicable statutory provisions, rules, etc.

18. The Travancore-Cochin Prison Act came into force on 06.06.1950. By virtue of Sections 3(5) and 59(4), the state government enacted the 1958 Rules on 26.07.1958. The Kerala Prisons and Correctional Services (Management) Act, 2010 [hereafter '2010 Act'] came into force on 12/14.05.2010. By virtue of Section 102(2) of this Act (the savings clause) the 1958 Rules were to continue till the commencement of the new rules (i.e., the 2014 Rules), on 06/23.05.2014. On 14.06.2022, a government order was issued containing general guidelines on premature release, classifying prisoners such that those who had committed certain offences could not be released prematurely, while others, could only be considered after 25 years. This government order also, incorporated an executive instruction dated 20.04.2022 which excluded those involved in "murder of a woman" among other crimes, from the grant of premature release. Section 433-A of the CrPC, is also applicable to the extent that it forecloses the option of statutory remission until the convict who has been convicted for an offence punishable by life imprisonment (or commuted death sentence) has served 14 years of actual imprisonment.

19. Section 77 of the 2010 Act empowers the state government to, either suo moto or on recommendation of an Advisory Committee, prematurely release well-behaved, long term convicted prisoners with the objective of their better reformation and rehabilitation, as per prescribed rules. Rule 462 to 468 of the 2014 Rules, detail the procedure to be followed by the Advisory Committee while considering convicts for premature release. Whenever a prisoner completes 14 years actual imprisonment, they become eligible for consideration for premature release [ref : Rule 464(iv)]. The Advisory Committee/Board considers their case in detail, and make recommendations to the state government, which is empowered under Rule 468 of the 2014 Rules, to admit or reject the said recommendations.

20. A reading of the observations of this court in *State of Haryana v. Jagdish*, which was followed in *State of Haryana v. Raj Kumar*, makes the position of law clear : the remission policy prevailing on the date of conviction, is to be applied in a given case, and if a more liberal policy exists on the day of consideration, then the latter would apply. This is a digitally signed order.

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11. This Court in *Rani* (supra) has decided a similar issue following the judgment of the Supreme Court in *Joseph* (supra) and in light thereof, while quashing the impugned order wherein consideration was accorded to the case of the Petitioner under the 2018 Rules, directed the State to consider the case afresh applying the 2004 Policy. From the judgment of the Supreme Court in *Joseph* (supra), it is luminously clear that while considering the case of a convict for premature release, remission policy prevailing on the date of conviction is to be applied by the SRB, however, if a more liberal policy exists on the date of consideration, the latter would apply.

12. In light of the judgment of the Supreme Court in *Joseph* (supra) and the candid submission on behalf of the State, as noted above, this petition is allowed, setting aside the impugned order dated 21.11.2023, rejecting the case of the Petitioner for premature release. Respondents are directed to re- consider the case of the Petitioner for premature release, in terms of the 2004 Policy, applying the parameters laid down therein. Consideration to the case of the Petitioner shall be accorded by the SRB within twelve weeks from today.

13. Petition stands disposed of making it clear that this Court has not expressed any opinion on the merits of the case and it is open to the SRB to take a decision in accordance with the Policy and in the facts and circumstances of the case. Liberty is granted to the Petitioner to take recourse to remedies available in law, in case of any surviving grievance.

JYOTI SINGH, J FEBRUARY 12, 2024/akc/shivam This is a digitally signed order.

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