

## **Shri Niwas And Ors. vs Delhi Administration And Ors. on 9 September, 1982**

**Equivalent citations: AIR1982SC1391, 1982(1)SCALE807, (1982)3SCC209**

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**Bench: V.D. Tulzapurkar**

ORDER

Order dated 8th September, 1982

1. In the following writ petitions:

W.P. Nos. 915/82 (Buta Singh), 917/82 (Durga s/o Tikam), 921/82 (Ajit Singh), 922/82 (Darshan Lal), 923/82 (Vijay Kumar), 924/82 (Jagdish), 925/82 (Bhagwan Jha), 926/82 (Inder Singh), 927/82 (Surinder Singh), 928/82 (Joginder Singh), 929/82 (Roshan Lal), 934/82 (Ram Tahl), 935/82 (Mohd. Sulaiman), 936/82 (Gurmit Singh), 937/82 (Sant Lai @ Pappu), 938/82 (Bhola Nath).

the cases of these petitioners were recommended for release by the Superintendent of Jail on their completion of 10 years imprisonment inclusive of remissions since each one of them was aged below 20 years at the date of the commission of the offence. From the affidavit in reply which has been filed in these matters it appears clearly that the only ground on which their release orders have not been passed and consideration of their cases has been deferred is that the Sentence Revising Board is yet to ascertain the date of birth and the proof of each one's age at the date of the commission of the offence. We are informed that the material in this respect would obviously be lying with the jail authorities, first the judgment of the trial court where the age must have been mentioned and secondly when these convicts were admitted to jail the doctor under Rule 101 must have noted the age of each one of them. We, therefore, feel that there is no sufficient reason why their cases for release should not have been disposed of by now. We, therefore, issue a mandamus directing that all the above petitioners should be forthwith released. In case, on ascertainment of the proof of age it is discovered in the case of any one of them that he was not below 20 years of age at the date of the commission of the offence, it will be open to the Delhi Administration to move the Court in that behalf when appropriate orders may be passed.

Further order dated 9th September, 1982

2. In Writ Petition No. 932/82 (Pritam Singh) the petitioner who was above the age of 20 at the date of the commission of the offence has undergone a total imprisonment of 19 years 3 months and 16 days inclusive of remissions and unexpired period of his imprisonment is hardly 8 months and 14 days. The only ground on which his case for premature release has been deferred by the Sentence Revising Board as stated in the counter-affidavit is that the report of the Probation Officer is awaited and had not been received by the Board till its meeting held on 25.3.1982. We find from the affidavit in rejoinder an averment made to the effect that the Probation Officer's report was forwarded to the Superintendent of Jail for being kept before the Board meeting that was to be held on 21.9.1981. However, there is no clinching material before us to show that :the report was actually received by the Sentence Revising Board. Since, however, this petitioner has undergone a total imprisonment of 19 years 3 months and 16 days inclusive of remissions, we feel that this is a fit case where the petitioner should be released on bail forthwith. It is accordingly directed that this petitioner be released forthwith on bail to the satisfaction of Chief Metropolitan Magistrate, Delhi. In case there is real hardship in furnishing sureties the Chief Metropolitan Magistrate may release him on execution of personal bond. In case any adverse order is ultimately passed by the Sentence Revising Board. it will be open to the petitioner to challenge that order in appropriate proceedings and it will be open to the authorities concerned to apply for cancellation of bail.

3. In Writ Petition Nos. 930/82 (Jaswant Singh) and 919/82 (Raghu-nath) consideration of their cases for premature release has been deferred by the Sentence Revising Board as certain reports from the Police Department as well as from the Probation Officer had not been received by the Board. Since both these petitioners have undergone total imprisonment of over 17 years and 16 years inclusive of remissions respectively, it is high time that their release should have been considered by the Board without any delay. The respondents are, therefore, directed to consider and dispose of their cases for premature release within a period of one month from today. If, for some reason, they are not disposed of at the expiry of one month from today, both these petitioners shall then stand released on bail to the satisfaction of Chief Metropolitan Magistrate, Delhi. In case, ultimately, the Sentence Revising Board takes a decision adverse to these two petitioners, it will be open to the petitioners to challenge that decision in appropriate proceedings and it will also be open to the authorities concerned, if they are so advised, to apply for cancellation of bail.

4. In Writ Petition No. 914/82 (Shri Niwas) the petitioner has undergone a total imprisonment of 14 years 3 months and 28 days inclusive of remissions and as such his case for premature release has become ripe for consideration. From the counter-affidavit filed on behalf of Delhi Administration the only thing that has been stated is that his case for premature release was deferred for being considered to the next meeting of the Board for want of requisite information without indicating what information was required by the Board. It is not disputed that the police report, Probation Officer's report as well as the Jail Superintendent's report are favourable to the petitioner and that all these authorities have recommended his premature release and his conduct in jail has also been certified to be good. In these circumstances, we do not see any reason why consideration of his case for premature release should be deferred any longer. We, therefore, direct that the petitioner be released forthwith from the prison. If at a subsequent stage, the Sentence Revising Board comes to a contrary conclusion, it may be open to the authorities concerned to move this Court for appropriate orders.

5. In Writ Petition No. 920/82 (Irshad Ali) the petitioner has undergone a total imprisonment of 14 years 4 months and 14 days inclusive of remissions and his case for premature release has become ripe for consideration. In the counter-affidavit filed on behalf of Delhi Administration what has been stated is that his case for premature release was deferred for consideration to the next meeting of the Board as judgment in his case was not made available so as to ascertain the circumstances and the background of the offence committed by him. This would show that the Board has to ascertain and consider certain facts bearing on the question of his premature release. It is, therefore, necessary that some reasonable time will have to be given to the Sentence Revising Board to consider his case. However, we find that his case for premature release has been recommended by the Probation Officer as well as by the Jail Superintendent and his conduct in jail has also been certified to be good and the police report is non-committal in the sense that the police have no comments to make. We, therefore, issue a mandamus directing the authorities concerned to consider and dispose of his case within three months from today, to enable the Sentence Revising Board to expedite the consideration of his case within three months we place on record the fact that the counsel for the petitioner has handed over to the counsel for the respondent true copies of the judgments of the trial court as well as the High Court which the counsel for the respondent states will be forwarded to the authorities concerned forthwith. If, for any reason, his case is not disposed of at the expiry of three months, then the petitioner shall be released on bail to the satisfaction of Chief Metropolitan Magistrate, Delhi. In case of real hardship in furnishing sureties the Chief Metropolitan Magistrate may release him on execution of personal bond. If, however, ultimately the decision of the authorities is adverse to the petitioner, it will be open to the petitioner to challenge that order in appropriate proceedings and it will also be open to the authorities concerned to apply for cancellation of bail.

6. In Writ Petition No. 931/82 (Kashmira Singh), the petitioner has undergone a total imprisonment of 14 years 4 months and 11 days inclusive of remissions and his case for premature release has become ripe for consideration. It has been stated in the counter-affidavit that as the report from the Police Department and also from the Probation Officer with respect to the convict were not available the Board deferred consideration of his case to its next meeting. It appears that in the case of this petitioner the Jail Superintendent has recommended his case to be favourably considered and his conduct in jail has also been certified to be good. According to instructions of the petitioners the reports of the police as well as the Probation Officer have since been received by the Sentence Revising Board. However, since there is no clinching material to show whether these reports have actually been received by the Board, it would be desirable that some reasonable time should be given to the Board to dispose of his case. It is accordingly directed that the Board shall consider and dispose of his case within two months from today. If, for any reason, the consideration is postponed and orders are not made at the expiry of two months, the petitioner shall stand released on bail to the satisfaction of Chief Metropolitan Magistrate, Delhi. In case of real hardship in furnishing sureties the Chief Metropolitan Magistrate may release him on execution of personal bond. If, ultimately, any adverse order is passed by the Board, it will be open to the petitioner to challenge that order in appropriate proceedings and it will be open to the authorities concerned to apply for cancellation of bail, if so advised.

7. In Writ Petition No. 933/82 (Sukhdev Singh) the petitioner Jias undergone a total imprisonment of 14 years 11 months and 6 days inclusive of remissions and his case has become ripe for consideration for premature release. So far as the Probation Officer and Jail Superintendent are concerned they have recommended his release and his conduct in jail has also been certified to be satisfactory. The police report, however, is non-committal in the sense that the police have no comments to make. In the counter-affidavit filed on behalf of Delhi Administration all that has been stated is that the Board did not recommend the case of premature release of this convict because it was found that he had absconded when he was released from jail on parole. There is an averment in the rejoinder filed on behalf of the petitioner to the effect that the petitioner had been acquitted of the said charge and this order of acquittal is on his original file. If that be so, the ground suggested by the Board would no longer be valid. However, this fact will have to be ascertained before the petitioner is finally released. It is, therefore, directed that the authorities will consider and dispose of his case for premature release within a period of one month from today. If, for some reason or the other, his case is not disposed of at the expiry of one month, the petitioner shall stand released on bail to the satisfaction of Chief Metropolitan Magistrate, Delhi. In case there is real hardship in furnishing sureties the Chief Metropolitan Magistrate may release him on execution of personal bond. If, ultimately, the decision of the authorities goes against the petitioner, he will have to take steps to challenge the same in appropriate proceedings and it will be open to the authorities to apply for cancellation of bail, if so advised.

8. In Writ Petition Nos. 916/82 (Haripad Nath) and 918/82 (Chandresh Sharma) the cases for premature release of these two petitioners were considered and rejected by the Board and it is not possible to take the view that the reasons are not valid or are irrelevant. The petitions are, therefore, dismissed. However, in the case of Chandresh Sharma the Board may consider her case for premature release after lapse of reasonable time by keeping in view the fact that she has a young minor son who would need mother's care but who at present is being looked after by her brother-in-law.