

**IN THE SUPREME COURT OF INDIA  
CRIMINAL ORIGINAL JURISDICTION**

**WRIT PETITION (Crl.) No. 173/2022**

**MAHENDRA & ORS.**

**... PETITIONER(S)**

**VERSUS**

**THE STATE OF UTTAR PRADESH & ORS.**

**... RESPONDENT(S)**

**O R D E R**

We have heard learned counsel for the petitioner and the learned Additional Advocate General for the State.

2. This Writ Petition has been filed seeking the premature release of the petitioner on the ground that they have already suffered incarceration between 24 to 26 years.

3. Facts in brief nutshell relevant for the purpose of this case are as under:-

(i) The petitioners along with co-accused Mahendra were tried for an offence under Section 302, 307 r/w Section 149 of Indian Penal Code (for short, 'I.P.C.') in

Sessions Trial No. 299 of 1980. The trial court vide judgment dated 23.02.1985 convicted the petitioners and were awarded rigorous imprisonment for life under Section 302 r/w 149 I.P.C. and seven years rigorous imprisonment under Section 307 r/w Section 149 I.P.C. and two years rigorous imprisonment under Section 148 I.P.C.

(ii) The Criminal Appeal by the petitioners before the High Court being Criminal Appeal No. 497 of 1985, vide judgment and order dated 13.12.2002 completely acquitted the co-accused Gajadhar.

(iii) The petitioners were also acquitted of the charges under Section 148 I.P.C. However, the High Court convicted them under Section 302 and 307 with the aid of Section 34 I.P.C. and the sentence awarded by the trial court was affirmed.

(iv) Special Leave Petition filed before this Court came to be dismissed and thus the conviction and sentence awarded to the petitioners stood affirmed.

4. It is an undisputed fact that petitioner nos. 1 and 2 have already undergone sentence of more than 24 years, while petitioner no. 3 has completed 25 years of incarceration and petitioner no. 4 has also undergone almost 24 years of incarceration.

5. After completion of 14 years of incarceration, Form-A of the petitioners were

forwarded by the Jail Superintendent along with five points Report to the authorities for consideration of the release of the petitioner under Probation Act, 1938 r/w Rule 4 of Uttar Pradesh Prisoners Release on Probation Rules - 1938, for their premature release. On rejection of their prayer for premature release, the petitioners approached this Court by filing instant Writ Petition. After issuance of notice, this Court on 05.08.2022, directed the respondents once again to consider premature release of the petitioner within a period of four weeks.

6. A counter affidavit has been filed on behalf of the State alleging that since the petitioners are guilty and have been convicted for murder of three persons, hence, they are not eligible for premature release under the policy.

7. Learned counsel for the petitioners have placed reliance on a catena of judgments rendered by this Court in identical circumstances. Reference may be made to judgment rendered in the case of **Shor Vs. State of Uttar Pradesh and Another**<sup>1</sup> (two Judges Bench), **Munna Vs. State of Uttar Pradesh and Anr.**<sup>2</sup> (three Judges Bench) and **Satish alias Sabbe Vs. State of Uttar Pradesh**<sup>3</sup> (three Judges Bench). Besides, reference has also been made to various orders passed by different benches.

8. Learned Additional Advocate General appearing for the State of Uttar Pradesh has vehemently opposed the petition and submitted that in view of the

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1 2020 SCC OnLine SC 626

2 2020 SCC OnLine SC 813

3 2020 SCC OnLine SC 791

applicable policy, the petitioners are not eligible for premature release as they have not undergone the prescribed period of incarceration under the said policy.

9. We have considered the arguments advanced by learned counsel for the parties. We may gainfully refer to following observations made by the three Judges bench in the case of **Satish alias Sabbe (Supra)**:-

*“18. it would be gainsaid that the length of the sentence or the gravity of the original crime can't be the sole basis for refusing premature release”.*

The three Judge Bench further went to observe as under :-

*“21. In the present case, considering how the petitioners have served nearly two decades of incarceration and have thus suffered the consequences of their actions; a balance between individual and societal welfare can be struck by granting the petitioners conditional premature release, subject to their continuing good conduct. This would both ensure that liberty of the petitioners is not curtailed, nor that there is any increased threat to society. Suffice to say that this order is not irreversible and can always be recalled in the event of any future misconduct or breach by the petitioners. “*

10. In the case at hand, we have also taken notice of the fact apart from long period of incarceration of petitioners ranging between 24 to 25 years and the fact that petitioners are of advanced age. Petitioner nos. 1 and 2 are almost 63 years old, petitioner no. 3 is aged 81 years and petitioner no. 4 is aged 54 years.

11. Considering the facts and circumstances of the case and position of law settled by the pronouncement of various judgments by this Court referred to

hereinabove, we are of the considered opinion that petitioners are entitled to be released on probation in terms of Section 2 of Uttar Pradesh Prisoners Release on Probation Act, 1938, within a period of two weeks from the date of this order. The respondent State shall be at liberty to impose condition as it may deem fit to balance public safety with individual liberty,

12. Subject to aforesaid orders and direction, the Writ Petition stands allowed. Pending application(s), if any, shall stand disposed of.

.....J.  
( KRISHNA MURARI )

.....J.  
( SANJAY KAROL )

**NEW DELHI**  
**21<sup>st</sup> APRIL, 2023**

ITEM NO.1

COURT NO.12

SECTION X

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Criminal) No(s). 173/2022

MAHENDRA & ORS.

Petitioner(s)

VERSUS

THE STATE OF U.P. & ORS.

Respondent(s)

( IA No. 66022/2022 - GRANT OF BAIL)

Date : 21-04-2023 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE KRISHNA MURARI  
HON'BLE MR. JUSTICE SANJAY KAROL

For Petitioner(s) Mr. Aarif Ali, Adv.  
Mr. Mujahid Ahmad, Adv.  
Mr. Pankaj Tiwari, Adv.  
Mr. Raj Kumar Yadav, Adv.  
Mr. Mohd. Irshad Hanif, AOR

For Respondent(s) Ms. Garima Prashad, Sr. A.A.G.  
Ms. Ruchira Goel, AOR

UPON hearing the counsel the Court made the following  
O R D E R

The writ petition stands allowed in terms of  
the signed order. Pending application(s), if any,  
shall stand disposed of.

The order inter alia reads as under :

"Considering the facts and circumstances of the case and position of law settled by the pronouncement of various judgments by this Court referred to hereinabove, we are of the considered opinion that petitioners are entitled to be released on probation in terms of Section 2 of Uttar Pradesh Prisoners Release on Probation Act, 1938, within a period of two weeks from the date of this order. The respondent State shall be at liberty to impose condition as it may deem fit to balance public safety with individual liberty"

(Geeta Ahuja)  
Assistant Registrar-cum-PS

(Beena Jolly)  
Court Master

(Signed Order is placed on the file)