

ITEM NO.5

COURT NO.1

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). 497/2022

KARUNA SHANKAR

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

(IA No. 191107/2022 - EXEMPTION FROM FILING O.T. IA No. 191108/2022
- GRANT OF BAIL)

Date : 13-01-2023 These matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

For Petitioner(s) Mr. Rishi Malhotra, AOR

For Respondent(s) Mr. Ardhendumauli Kumar Prashad, AAG
Mr. Adarsh Upadhyay, AOR
Ms. Pallavi Kumari, Adv.

Ms. Kiran Suri, Sr. Adv.
Ms. Rashmi Malhotra, AOR
S. Saini, Adv.

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

- 1 The petitioner was convicted on 2 February 1984 of an offence punishable under Section 302 read with Section 34 of the Indian Penal Code 1860 and sentenced to suffer rigorous imprisonment for life in Sessions Trial No 309 of 1982 and Sessions Trial No 592 of 1982.
- 2 The custody certificate issued by the Senior Superintendent of Police, Central Jail, Fatehgarh on 5 January 2023 (which is annexed to the counter affidavit)

indicates that the petitioner has undergone a total custody of 15 years and 14 days without remission and 19 years and 04 months with remission.

- 3 In response to the plea for premature release, a counter affidavit has been filed by the Superintendent of the District Jail, Ghaziabad. The counter affidavit indicates that Form-A submitted by the petitioner is pending before the District Magistrate, Unnao. The application for premature release was sent to the District Magistrate, Unnao on 2 September 2019. This was sent to the Prison Headquarters by the District Magistrate on 25 October 2022. The Prison Headquarters, on 6 December 2022 directed the Superintendent of the District Jail, Ghaziabad to make available the updated details of the co-accused prisoners and a copy of the judgment of the High Court.
- 4 The proposal has been sent to the Prison Headquarters for reconsideration on 28 December, 2022 by the Senior Superintendent of the Central Jail, Fatehgarh.
- 5 In view of the settled position of law laid down by this Court the application filed by the petitioner is required to be considered on the basis of the policy as it stood on the date of the conviction. If a more liberalized regime has been brought into effect subsequently, this should also be considered.
- 6 The counter affidavit which has been filed on the record indicates that the application has remained pending since September 2019 for well over three years and three months. This delay is without any reason or justification. Since this Court has, while taking notice of the sorry state of affairs in the matter of the release of convicts who have undergone long terms of imprisonment, issued directions to the Director General of Prisons, UP in an earlier case, we are not in these proceedings taking up the issue which is pending consideration.

- 7 In the present case we find no reason or justification for the inordinate delay in dealing with the application of the petitioner for premature release.
- 8 We accordingly direct that within a month from the date of this order, the Director General of Prisons shall take all necessary steps to ensure that the application for premature release is duly considered and disposed of and file an affidavit of compliance before this Court on or before 15 February 2023.
- 9 In the event that no such affidavit is filed, the Registry shall re-list the petition before this Court for directions for compliance.
- 10 The Writ Petition is disposed of at this stage giving liberty to the counsel for the petitioner to mention the Writ Petition for revival in case of non-compliance of the direction.
- 11 The Director General of Prisons and all concerned authorities are placed on notice that this Court would be constrained to take recourse to the coercive arm of law if other instances indicating recalcitrance of the authorities in dealing with such applications are brought to the notice of the Court.
- 12 The Standing Counsel shall immediately forward a copy of the present order to the Director General of Prisons.
- 13 Pending applications, if any, stand disposed of.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(Mathew Abraham)
COURT MASTER