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IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (Cr1.) NO. 155 OF 2021

BECHE LAL

.....PETITIONER(S)

Vs.

THE STATE OF UTTAR PRADESH AND ANR.

.....RESPONDENT(S)

WITH

WRIT PETITION (Cr1.) NO. 161 OF 2021

WITH

WRIT PETITION (Cr1.) NO. 168 OF 2021

WITH

WRIT PETITION (Cr1.) NO. 183 OF 2021

WITH

WRIT PETITION (Cr1.) NO. 195 OF 2021

WITH

WRIT PETITION (Cr1.) NO. 172 OF 2021

WITH

WRIT PETITION (Cr1.) NO. 177 OF 2021

O R D E R

In this batch of writ applications, common relief is sought for premature release of persons sentenced to life imprisonment, after completion of over 14 years of imprisonment. The petitioners have remained incarcerated for actual periods ranging from 16 years to 24 years without remission and 20 years to 31 years with

remission. The convictions are primarily under Section 302, 302/149 of the Penal Code. This Court under Article 32 of the Constitution has been passing orders from time to time for premature release of persons convicted either by setting aside the orders refusing grant of premature release on erroneous grounds as well as passing orders for release directly even though the person sentenced had not approached the authorities before institution of the writ petition.

In *State of Haryana v. Jagdish*, (2010) 4 SCC 216 explaining the manner for consideration of applications for premature release this Court observed as follows:

"54. The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date of consideration of the case of a "lifer" for premature release, he should be given benefit thereof." (emphasis added by us)

In *Union of India v. V. Sriharan*, (2016) 7 SCC 1 it was observed as follows :

"114.... As far as the implication of Article 32 of the Constitution by this Court is concerned, we have already held that the power under Sections 432 and 433 is to be exercised by the appropriate Government statutorily, it is not for this Court to exercise the said power and it is always left to be decided by the appropriate Government, even if someone approaches this Court under Article 32 of the Constitution.."

On 15.04.2021, even after noticing the earlier orders for premature release passed by this court under Article 32 of the Constitution, and after our attention was invited to a policy of the State of Uttar Pradesh dated 01.08.2018, framed under Article 161 of the Constitution, we observed that "there appears to be a virtual deluge of such writ petitions from the State of Uttar Pradesh seeking premature release notwithstanding judicial pronouncements of this court."

The High Court on 16.04.2018, in *Chandrase & Ors Vs. State of Uttar Pradesh*, Criminal Misc. Writ Petition No.6041 of 2018, after noticing the lack of fairness and consistency in considering applications for premature release observed and directed as follows:

"13. The impugned orders ex facie appear to be lacking reason for rejection of such premature release particularly when there was recommendation made by the Committee headed by the District Magistrate as well as the opinion of the court was also not against the convicts and their conduct was reported to be satisfactory in jail. In these circumstances the impugned orders deserve to be set aside and are accordingly set aside with a direction that the Government shall reconsider their case for premature release in the light of fair and non-discriminatory principles by speaking order within a period of one month from the date a certified copy of this order is produced by the learned counsel for applicants. Needless to say that Government ought to lay down a transparent policy in regard to premature release of convicts who were lying in prison for a long time as has been directed on several occasions by this court in earlier writ petitions."

The State government then framed the policy dated 01.08.2018. Curiously, contrary to the direction of the High Court, the State Government, arbitrarily restricted it to premature release of prisoners sentenced to life imprisonment on the event of Republic day each year only. The restricted policy is patently bad for being

in derogation of the orders of the High Court. Additionally, it is also discriminatory in nature as there is no nexus to be achieved by providing for premature release only on a specified date, when those eligible to be considered for premature release form a class of persons sentenced to life imprisonment. There is no criteria laid down on basis of which a convict shall be considered for release on the opportune date in contradistinction to another who may be relegated to consideration in normal course. Differentiation amongst this class of convicts on separate *indicia* based on specified parameters is an entirely different matter. The policy having statutory force under Article 161 of the Constitution will naturally apply to all persons sentenced to life imprisonment. Having been framed subsequent to the U.P. Jail Manual, 1956 and the U.P. Prisoners Release on Probation Rules, 1938 will take precedence over the latter. The fact that any application for premature release submitted before the formulation of the new policy may have been rejected, cannot be bar to fresh consideration without being prejudiced by the earlier rejection. If premature release of a convict can be denied on parity because a similar application of a co-accused had been rejected, conversely if a co-accused has been granted the benefit of premature release, it cannot be denied to another co-accused.

The avowed object in the policy dated 01.08.2018 is to prevent overcrowding in prisons of the State, to prevent frustration of emotions and disappointment along with rehabilitation. It assumes much more significance in the present pandemic times to prevent super spreaders. We cannot approve the policy that those who do not

specifically apply for remission would fall in the restricted category and would be ineligible for consideration. As a welfare State, the obligation to do so would lie on the State by periodic assessments and therefore we thought it proper to take help of the U.P.State Legal Services Authority, taking judicial notice of the fact that at many times a convict may not be aware of the requirement or may not have the will to do so. Sri Diwakar, appearing for the State informed us that he has already interacted with the U.P.State Legal Services Authority on the issue. The present order therefore imposes an obligation on the State and cannot be read as confined in its operation to the present petitioners alone. We now take up the individual writ petitions for consideration.

W. P (Cr1.) NO. 155 OF 2021

The counter affidavit on behalf of the State acknowledges that recommendation for release of the petitioner dated 27.10.2017 is still pending consideration. Naturally it now has to be considered in accordance with the Policy dated 01.08.2018. Such consideration must be done within a period of four weeks and disposed by a reasoned and speaking order.

The writ petition stands disposed of with the aforesaid directions.

W. P (Cr1.) NO. 161 OF 2021

It is submitted that the petitioner had earlier been recommended for release despite which he has not been released.

The petitioner had represented for release on 17.12.2017 and 05.01.2018. It has been rejected on 15.5.2018. His case is therefore required to be considered afresh under the policy dated 01.08.2018 notwithstanding the earlier rejection and without being prejudiced by the same within a period of four weeks and disposed by a reasoned and speaking order.

The writ petition stands disposed of with the aforesaid directions.

W.P. (Cr1.) No. 168/2021

The counter affidavit states that the conduct of the petitioners had been satisfactory, yet the recommendation for premature release has been rejected on 12.05.2018 and 19.08.2018.

There is nothing in the counter affidavit to indicate that the consideration has been done under the policy dated 01.08.2018. We therefore, direct fresh consideration of the case of the petitioners under the policy dated 01.08.2018 within a period of four weeks and disposed by a reasoned and speaking order.

The writ petition stands disposed of with the aforesaid directions.

W.P. (Cr1.) No. 183/2021 & W.P. (Cr1.) NO. 195/2021

The petitioners except petitioner no. 3 in W.P. (Cr1.) No. 195/2021 have represented for premature release under the policy dated 01.08.2018. The case of all the three petitioners for premature release under the said policy shall be considered within

a period of four weeks and disposed by a reasoned and speaking order.

The writ petitions stand disposed of with the aforesaid directions.

W.P. (Cr1.) No. 172 of 2021

It is submitted that co-accused convicted along with the petitioner has already been released under the orders of this Court. The case of the petitioner for premature release shall be considered within a period of four weeks and disposed by a reasoned and speaking order.

The writ petition stands disposed of with the aforesaid directions.

W.P.(Cr1.) No. 177/2021

It is submitted that the co-accused has already been released prematurely five years ago.

The representation of the petitioners in like manner is directed to be considered under the policy dated 01.08.2018 and disposed within four weeks by a reasoned and speaking order.

The writ petition stands disposed of with the aforesaid directions.

We request the Executive Chairman of the U.P.State Legal Services Authority, to monitor not only the case of the present petitioners, but of such other prisoners also who may be eligible for consideration but are unable to do so for one reason or the other, keeping in mind the avowed object and purpose of the policy

dated 01.08.2018. The concerned authorities of the State Government are obligated to act in co-operation with the State Legal Services Authority in the larger interest. We may not be understood to have curtailed the procedure or jurisdiction in any manner of the authorities specified in paragraphs 4,6 & 8 of the policy dated 01.08.2018.

In the event of any person being aggrieved, the remedy shall first lie before the High Court under Article 226 of the Constitution.

A copy of the order may be forwarded to the Member Secretary, Uttar Pradesh State Legal Services Authority.

.....J.
(NAVIN SINHA)

.....J.
(V. RAMASUBRAMANIAN)

New Delhi;
04th May, 2021.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Criminal) No(s). 155/2021

BECHE LAL

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

(FOR ADMISSION and IA No.47102/2021-GRANT OF BAIL and IA
No.47103/2021-EXEMPTION FROM FILING O.T.)

WITH

W.P.(Cr1.) No. 161/2021 (X)
IA No. 52507/2021 - GRANT OF BAIL)

W.P.(Cr1.) No. 168/2021 (X)
(FOR ADMISSION and IA No.52251/2021-GRANT OF BAIL and IA
No.52252/2021-EXEMPTION FROM FILING O.T.)

W.P.(Cr1.) No. 183/2021 (X)
(FOR ADMISSION and I.R. and IA No.57998/2021-GRANT OF BAIL and IA
No.57997/2021-EXEMPTION FROM FILING O.T.)

AND

W.P.(Cr1.) No. 195/2021 (X)
(FOR ADMISSION and I.R. and IA No. 59900/2021-GRANT OF BAIL and IA
No. 59899/2021-EXEMPTION FROM FILING O.T.)

W.P.(Cr1.) No. 172/2021 (X)
(FOR ADMISSION and IA No.53475/2021-GRANT OF BAIL and IA
No.53478/2021-EXEMPTION FROM FILING O.T.)

W.P.(Cr1.) No. 177/2021 (X)
(FOR ADMISSION and I.R. and IA No.55759/2021-GRANT OF BAIL and IA
No.55760/2021-EXEMPTION FROM FILING O.T.)

Date : 04-05-2021 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE NAVIN SINHA
HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s)

Mr. Z.U. Khan, Adv.
Mr. Yunus Malik, kAdv.
Mr. Anish Maheshwari, Adv.
Mr. Aman Malik, Adv.
Mr. Samir Malik, AOR

Mr. Jetendra Singh, Adv.
Mr. Vijendra Kumar Kaushik, Adv.
Ms. Kalpana Sabharwal, Adv.
Ms. Priyanka Singh, Adv.
Mr. Varun Punia, AOR

Mr. Z.U. Khan, Adv.
Mr. Sulaiman Mohd Khan, Adv.
Mr. Ashish Choudhary, Adv.
Mrs. Taiba Khan, Adv.
Mr. Rohit Amit Sthalekar, AOR

Mr. Rishi Malhotra, AOR

For Respondent(s)

Mr. Vinod Diwakar, AAG
Mr. Sarvesh Singh Baghel, AOR
Mr. B.N. Dubey, Adv.
Ms. Pooja Singh, Adv.
Mr. Amir Khan, Adv.
Ms. Shivranjani Ralawata, Adv.

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

The Writ Petitions stand disposed of in terms of signed
order.

Pending application (s) shall also stand disposed of.

(RAJNI MUKHI)
COURT MASTER (SH)

(PRADEEP KUMAR)
BRANCH OFFICER

(Signed order is placed on the file)