



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 2<sup>ND</sup> DAY OF MARCH, 2023**

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**BEFORE**

**THE HON'BLE MR JUSTICE M.NAGAPRASANNA**  
**WRIT PETITION NO. 1300 OF 2023 (GM-RES)**

**BETWEEN:**

SRI OMKARMURTHY  
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...PETITIONER

(BY SRI K.B.MONESH KUMAR, ADVOCATE FOR  
SRI. PRADEEP PATIL, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
BY ADDL. CHIEF SECRETARY TO GOVERNMENT  
HOME DEPARTMENT  
2<sup>ND</sup> FLOOR, VIDHANA SOUDHA,  
BENGALURU – 560 001.
2. THE LIFE CONVICTS RELEASE COMMITTEE  
REPRESENTED BY ITS  
CHAIRMAN AND PRICIPAL SECRETARY,  
HOME DEPARTMENT  
VIDHANA SOUDHA  
BENGALURU – 560 001.



3. THE DIRECTOR GENERAL OF POLICE  
PRISONS AND CORRECTIONAL SERVICES  
SESHADRI ROAD,  
BENGALURU – 560 003.
4. CHIEF SUPERINTENDENT OF CENTRAL PRISON  
PARAPPANA AGRAHARA  
ELECTRONIC CITY POST,  
BENGALURU – 560 100.

...RESPONDENTS

(BY SRI.B.V.KRISHNA, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE DIRECTION TO THE R1, 3 AND 4 TO PLACE THE CASE OF THE PETITIONER BEFORE THE LIFE CONVICTS PREMATURE RELEASE COMMITTEE, THE R2 HEREIN AND ETC.,

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

### **ORDER**

The petitioner is before this Court seeking a direction by issuance of a writ in the nature of *mandamus* directing respondents 1, 3 and 4 to place the case of the petitioner before the Life Convicts Premature Release Committee ('the Committee' for short), the 2<sup>nd</sup> respondent.

2. Heard Sri.K.B.Monesh Kumar, learned counsel appearing for petitioner and Sri.B.V.Krishna, learned Additional Government Advocate appearing for respondents.



3. Facts adumbrated are as follows:

The petitioner gets embroiled in a crime which ends up in his conviction in S.C.No.52/2008. On the registration of a crime for the offences punishable under Sections 201, 302 and 376 of the IPC, the petitioner was convicted and sentenced to undergo imprisonment for life. By then, the petitioner was already in custody from 23.11.2007 itself, and continued to be in custody till the learned Sessions Judge convicted him for the aforesaid offences on 12.10.2010.

4. The petitioner files a criminal appeal before this Court in Crl.A.No.184/2020, wherein, this Court acquitted the petitioner of the offence punishable under Section 376 of the IPC and affirmed the conviction for other offences under Sections 201 and 302 of the IPC. The petitioner continues to be in prison and is now in prison for the last 16 years. The jail authorities have also issued certificates favouring the petitioner observing that his conduct has been exemplary throughout. On all the aforesaid basis, the petitioner seeks his premature release / remission on the ground that he has been a life convict for over 16 years and 10 months along with the



entitlement of remission before the jail authorities. What drives the petitioner to this Court is that, the case of the petitioner is not placed before the Committee - the second respondent by the fourth respondent.

5. Learned counsel appearing for petitioner Sri.K.B.Monesh Kumar would contend that the Committee is required to meet once in two months, six times in a year and the Committee has not met for the last six months and therefore, the application of the petitioner has not been able to be placed before the Committee to consider his premature release.

6. On the other hand, the learned Additional Government Advocate would on instructions submit that the Committee has slated to meet in the month of March for consideration of the cases of the petitioner and the like on their merit. He would submit that the endeavour of the Government would definitely be to meet frequently.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.



8. The afore-narrated facts are not in dispute. Therefore, they require no iteration. The issue in the *lis* lies in a narrow compass with the relief sought being only to place the case of the petitioner before the second respondent - Committee without any loss of time with regard to the entitlement of the petitioner for premature release in terms of law. It is not in dispute that the petitioner has been knocking at the doors of the Jail Authorities since 22.07.2022. The representation of the petitioner has not been placed before the Committee, only on the ground that the Committee has not met. It is now close to 8 months that the Committee has not met. In these circumstances, it becomes germane to notice the orders passed by the Apex Court from time to time concerning the release of the life convicts. The Apex Court considering the issue Statewise, in the case of **SONADHAR VS. THE STATE OF CHHATTISGARH<sup>1</sup>**, as in the State of Uttar Pradesh, has held as follows:

"STATE OF UTTAR PRADESH (U.P.)

*Uttar Pradesh was taken up as one of the states for carrying out a pilot project. The data shows that for the year 2021, 1372 applications were received for premature*

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<sup>1</sup> SLA (CrI.) No.529/2021, order dated 09.02.2022



release of the convicts and 633 applications were allowed by the State Government, while 739 applications were rejected. 588 life convicts have been prematurely released while 45 applications were returned for queries. We are cautious of the extent of pending cases on different aspects in Uttar Pradesh, but we express some concern about 739 applications being rejected, which is a large number and express an apprehension on whether the policy of 28.7.2021, which has added a condition of minimum 60 years before release, was an impediment. Ms. Garima Prashad, learned AAG submits that it was not pointed out to the Court in W.P.(CrI) No.398 of 2021 that in view of reservations expressed in different matters on this aspect, the bar of 60 years stands withdrawn. **She also makes a submission that an endeavour has been made to streamline the process so that the needful be done within a period 90 days from the inception of clearance and seven occasions have been identified when prisoners would be released. These are Republic day (26<sup>th</sup> January), Women's day (8<sup>th</sup> March), World Health Day (7<sup>th</sup> April), Labour Day (1<sup>st</sup> May), Yoga Day (21<sup>st</sup> June), Independence Day (15<sup>th</sup> August) and Gandhi Jayanti (2<sup>nd</sup> October). In this behalf, we would like to observe that insofar as the first half of the year is concerned, there are five occasions identified for release of prisoners but in the second half only two occasions have been identified. We desire the state Government to identify at least three more significant days for release of prisoners in the second half of the year."**  
(Emphasis supplied)

The Apex Court while noticing the issue *qua* the State of Uttar Pradesh, observes that the Committee has met five times a year in the first half of the year. The Apex Court directs that it desires that the State Government to identify atleast three more significant days for release of the prisoners in the second half of the year. Therefore, the direction of the Apex Court



would be that the Committee should meet atleast 8 times in a year. The Apex Court also notices that the progress in the State of Karnataka is on track and while observing that, it has held as follows:

"STATE OF KARNATAKA

*The progress in Karnataka is on track. The Government order dated 21.4.2020 was already existing and in pursuance to this Court's orders dated 07.7.2021 and 06.10.2021, a meeting was held by the stake holders and following orders are stated to have been passed:-*

*"(a) Jail Authority was required to take effective steps for the identification of the life convicts eligible for premature release as on 01.01.2022,*

*(b) Jail Authorities were required to hold advisory board meetings in the respective Central Prisons by 24.1.2022,*

*(c) Proceedings of such advisory board meetings were to be communicated to the KSLSA by DIG, Prisons & Correctional Services by 28.1.2022, and*

*(d) Jail authorities were required to inform whether the prisoners required legal aid in contesting the case or for challenging the rejection/non consideration of their premature release."*

*An Advisory board meeting has thereafter been held and the information analysis shows that out of the 119 eligible persons, 89 prisoners were recommended while cases of 21 prisoners were deferred and cases of 9 prisoners were rejected. The directions sought by the Committee qua Karnataka are as under:-*

*"(a) It may be directed that the applications pending with the Life Convicts*



*Release Committee / Karnataka State Government are processed and the process is completed as per the SOP approved by this Hon'ble Court, and*

*(b) State of Karnataka may be directed to conduct the exercise afresh for all prisoners (except for the ones considered in the instant round) who will be eligible in July 2022."*

*We accept the suggestion and direct accordingly."*

Later, the Apex Court while passing orders in the case of **KARUNA SHANKAR V. STATE OF UTTAR PRADESH<sup>2</sup>**, has held as follows:

- "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*

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<sup>2</sup> W.P.(Crl.) No.497 of 2022 dtd. 13.01.2023





*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."*

*(Emphasis supplied)*

The Apex Court in the case of **KARUNA SHANKAR** (*supra*) observes that the delay in release of the prisoners on their merit *i.e.*, of those life convicts, depicts a sorry state of affairs of the State of Uttar Pradesh and directs that the Committee



should meet and ensure premature release of the life convicts, within a month from the date of the order. If both the orders passed by the Apex Court are read in tandem, what would unmistakably emerge is that, the Committee though would not meet 8 times a year, but should at least meet 6 times a year, which would mean once in two months, as the life convicts are statutorily entitled for consideration of their premature release in terms of the guidelines notified by the State.

9. What are the guidelines to be applied for such release is also considered by the Apex Court in the case of **SHARAFAT ALI VS. STATE OF UTTAR PRADESH**<sup>3</sup>, wherein, the Apex Court has held as follows:

*"6. The first principle which must be noted, while adjudicating upon the petition is that the application for premature release has to be considered on the basis of the policy as it stood on the date when the petitioner was convicted of the offence. This principle finds reiteration in several judgments of this Court such as State of Haryana v. Jagdish (2010) 4 SCC 216. The most recent of them is the decision in State of Haryana v. Raj Kumar @ Bitu (2021) 9 SCC 292.*

*7. The order which has been passed by the State government in the present case is bereft of an application of mind to relevant circumstances bearing on whether the petitioner should be released prematurely. The order contains general observations to the effect*

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<sup>3</sup> 2022 SCC Online SC 193



*that the release may result in resentment on the side of the victim, but this is a general consideration which would govern virtually all criminal offences where a person stands convicted of a serious offence, as in the present case under Section 302 read with Section 34 of the IPC. The order does not contain any reference whatsoever to whether the petitioner possesses any prior criminal history, save and except for the present case. Similarly, the order is completely silent on the conduct and behavior of the petitioner in jail and after he was convicted of the offence. The relevant considerations bearing upon whether the release of the petitioner would pose a danger to society have not been adverted to. There has to be a considered application of mind to the facts of each case.*

*8. In the circumstances, the order which has been passed rejecting the application of the petitioner for premature release suffers from a complete and patent non-application of mind.*

***9. For the above reasons, we allow the petition by setting aside the impugned order dated 30 July 2021 passed by the Government of Uttar Pradesh. We direct that the application of the petitioner for premature release shall be reconsidered on the basis of the policy as it stood on 17<sup>th</sup> January 2005, when the petitioner was convicted of an offence under Section 302 read with Section 34 of the IPC. The application shall be considered afresh without the petitioner being required to file any fresh application for premature release. An order shall be passed after taking into account all relevant facts and circumstances including those which have been adverted to above. This exercise shall be completed within a period of two months from the date of this order."***

*(Emphasis supplied)*

The Apex Court holds that the guidelines policy that prevailed at the time when the accused gets convicted is what would



become applicable for consideration of the application for premature release. Therefore, there can be no ambiguity for application of guidelines for consideration of the application for premature release of the life convicts, on their merit, for such release. The Apex Court considering the judgment in the case of **SHARAFAT ALI** (*supra*) and all other judgments on the issue, in the case of **RASHIDUL JAFAR @ CHOTA V. STATE OF UTTAR PRADESH AND ANOTHER<sup>4</sup>**, has held as follows:

"18. We direct that:

(i) **All cases for premature release of convicts undergoing imprisonment for life in the present batch of cases shall be considered in terms of the policy dated 1 August 2018, as amended, subject to the observations which are contained herein. The restriction that a life convict is not eligible for premature release until attaining the age of sixty years, which was introduced by the policy of 28 July 2021, stands deleted by the amendment dated 27 May 2022. Hence, no case for premature release shall be rejected on that ground;**

ii) *In the event that any convict is entitled to more liberal benefits by any of the amendments which have been brought about subsequent to the policy dated 1 August 2018, the case for the grant of premature release would be considered by granting benefit in terms of more liberal amended para/clause of the policies. All decisions of premature release of convicts,*

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<sup>4</sup> 2022 SCC Online SC 1201



*including those, beyond the present batch of cases would be entitled to such a beneficial reading of the policy;*

- iii) In terms of para 4 of the policy dated 1 August 2018, no application is required to be submitted by a convict undergoing life imprisonment for premature release. Further, through amendment dated 28 July 2021, para 3(i), which included convicts undergoing life imprisonment who have not filed application for pre-mature release in the prohibited category, has specifically been deleted. Accordingly, all cases of convicts undergoing life sentence in the State of Uttar Pradesh who are eligible for being considered for premature release in terms of the policy, including but not confined to the five hundred and twelve prisoners involved in the present batch of cases, shall be considered in terms of the procedure for premature release stipulated in the policy;*
- iv) The District Legal Services Authorities in the State of Uttar Pradesh shall take necessary steps in coordination with the jail authorities to ensure that all eligible cases of prisoners who would be entitled to premature release in terms of the applicable policies, as noticed above, would be duly considered and no prisoner, who is otherwise eligible for being considered, shall be excluded from consideration.*
- v) These steps to be taken by DLSAs would, include but not be limited to, Secretaries of DLSAs seeking status report on all prisoners undergoing life imprisonment in the prisons falling under their jurisdiction in terms of the format of table prepared in Annexure – A covering the details mentioned in para 13 of this judgment and ensuring its submission by relevant authorities within eight weeks of this order as well as on an annual basis. Further, DLSAs would utilize this status*



*report to monitor and engage with respective authorities to ensure the implementation of our directions to ensure premature release in terms of applicable policies in all eligible cases of convicts undergoing life sentence on a continuous basis;*

**vi) *The applications for premature release shall be considered expeditiously. Those cases which have already been processed and in respect of which reports have been submitted shall be concluded and final decisions intimated to the convict no later than within a period of one month from the date of this order. Cases of eligible life convicts who are (i) above the age of seventy years; or (ii) suffering from terminal ailments shall be taken up on priority and would be disposed of within a period of two months. The Uttar Pradesh State legal Services Authority shall, within a period of two weeks, lay down the priorities according to which all other pending cases shall be disposed of. All other cases shall, in any event, be disposed of within a period of four months from the date of this order; and***

**vii) *Where any convict undergoing life imprisonment has already been released on bail by the orders of this Court, the order granting interim bail shall continue to remain in operation until the disposal of the application for premature release."***

***(Emphasis supplied)***

Therefore, the Apex Court in all the aforesaid orders, have clearly directed the respective State Governments and Director General of Prisons of those States to take necessary steps to



ensure that the applications for premature release of life convicts to be considered and disposed, without any loss of time. The Apex Court has also admonished that it would be constrained to take recourse to coercive action, if recalcitrance is displayed.

10. On a coalesce of what the Apex Court has considered in all the afore-quoted judgments, what would unmistakably emerge is that cases of life convicts who are entitled for consideration of their premature release, should be considered without any loss of time. In the case at hand, the Committee has not met for the last 8 months which has resulted in plethora of cases being filed before this Court seeking a mandamus only to place those applications before the committee in the ensuing meeting. When the meeting would ensue the State itself is not aware, as no concrete date is being divulged for the committee to meet. In the afore-said circumstances, I deem it appropriate to direct the State Government to henceforth direct the 2<sup>nd</sup> respondent/Committee to meet at least 6 times a year – once in two months, so that those application/s are considered at the right time on their





individual merit and cases being filed only to place the application/s before the committee would be obviated. Till such time that the application of the petitioner would merit consideration before the committee, he would be entitled to be released on parole, in accordance with law, for a period that the Authorities of the jail would prescribe or till such time, the committee would meet and consider the case of the petitioner.

11. In view of the aforesaid reasons, the following:

**ORDER**

- (i) Writ Petition is disposed.
- (ii) A *mandamus* issues to the 1<sup>st</sup> respondent-State to direct the Committee to meet on or before 10<sup>th</sup> April, 2023 and consider the case of the petitioner and the like, whose cases are placed before it, for consideration of their cases for remission/premature release.
- (iii) It is made clear that the State Government shall henceforth, direct the 2<sup>nd</sup> respondent/Committee to meet once in two months, in the light of the directions issued by the Apex Court in the cases referred to in the course of the order.



- (iv) The directions shall be adhered to from the 1<sup>st</sup> of April, 2023.
- (v) The petitioner shall be considered for his release on general parole, in accordance with law, till the committee meets and considers his application for his premature release.
- (vi) The Registry is directed to communicate the order to the Additional Chief Secretary, Department of Home Affairs, Government of Karnataka, Bengaluru for its compliance.

**Sd/-  
JUDGE**

Bkp/nvj  
List No.: 1 Sl No.: 21