

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 SWrit Petition(s)(Criminal) No(s). 296/2024

VIRENDER SINGH & ORS.

Petitioner(s)

VERSUS

STATE (GOVT. OF NCT OF DELHI)

Respondent(s)

(FOR ADMISSION and IA No.148302/2024-EX-PARTE STAY AND IA
NO.205232/2024 - FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS)

WITH

W.P.(Crl.) No. 305/2024 (X)

(FOR ADMISSION and IA No.152747/2024-STAY APPLICATION)

Date : 10-09-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA

HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

For Petitioner(s) Mr. Rishi Malhotra, Sr. Adv.

For Respondent(s) Mr. Suryaprakash V. Raju, A.S.G.
Ms. Archana Pathak Dave, A.S.G.
Mr. Mukesh Kumar Maroria, AOR
Mr. Annam Venkatesh, Adv.
Mr. Vivek Gurnani, Adv.
Mrs. Meera Patel, Adv.
Mr. Sachin Sharma, Adv.UPON hearing the counsel the Court made the following
O R D E RWRIT PETITION (CRL.) NO.296/2024

This is a fit case where exemplary costs should be awarded. However, we cannot penalise the petitioners for the mistakes committed by their lawyers.

The Writ Petition proceeds on the footing that all the four petitioners have undergone 14 years of actual imprisonment without remission. There is a counter affidavit filed by the State along

with which nominal rolls of all four petitioners have been annexed. The counter affidavit shows that petitioner nos.2 and 4 have not completed 14 years of imprisonment without remission even as of today.

We have perused the Writ Petition. In the first paragraph of the Petition, it is stated that all the petitioners have undergone more than 14 years of total sentence. Even on page B of the synopsis, similar assertion has been made. Thus, a false statement was made in the Writ Petition that all the four petitioners have undergone actual 14 years of imprisonment. The petitioners have been convicted for different offences in different cases as can be seen from the nominal roll. But in the list of dates on page H, it is stated thus:

"1984-2010 The petitioner herein undisputedly has been convicted predominantly u/s 302/396/147/148/149/305 IPC etc. and has been sentenced to life imprisonment."

If we see the nominal rolls of the respective petitioners, even this statement is not fully correct. The petitioners ought to have specifically disclosed the offences for which they were convicted.

It is pertinent to note that after this Writ Petition was filed, an e-mail was addressed by the then Advocate-on-Record for the petitioners (who is the senior counsel who has appeared for the petitioners today) to the Jail Authorities on 15th July, 2024 which is Annexure R/2 to the counter affidavit. In the e-mail, he stated that petitioner no.2 has already undergone actual sentence of more

than 14 years. It is also stated that petitioner no.4 has undergone the sentence of more than 14 years. Therefore, the false statements made in the Writ Petition were repeated in the e-mail dated 15th July, 2024.

The order dated 19th July, 2024 passed by this Court reads thus:

"Issue notice, returnable on 6th September, 2024.

The learned counsel appearing for the petitioners states that as of today, the petitioners have been released on furlough and the period of furlough has not expired.

In view of this statement, we grant time to the petitioners to surrender till the returnable date."

(underlines supplied)

Now today, it is an admitted position that as of 19th July, 2024, the period of furlough of petitioner nos.2, 3 and 4 had already expired. In fact, that is the factual position set out by the Advocate for the petitioners himself in the e-mail dated 15th July, 2024. Though he was aware of this factual position, a false statement was made on 19th July, 2024 that the period of furlough of all the petitioners has not expired. It is only this factually wrong statement which led this Court to grant interim relief even to petitioner nos.2 to 4.

A large number of petitions are being filed in this Court wherein a grievance is made about non grant of permanent remission. During the last three weeks, this is the 6th or 7th case which we have come across where blatantly false statements have been made in the pleadings.

On a miscellaneous hearing day, there are 60 to 80 cases on

the cause list of every Bench. It is not possible for the Judges to go through each and every page of each and every case listed before the Court, though we make an endeavour to go through every case very meticulously. Our system works on faith. We trust the members of the Bar when we hear cases. But, when we come across cases like this, our faith is shaken. Thus, there are not only false statements made in the Writ Petition, but a false statement was made before this Court which is recorded in our order dated 19th July, 2024. The false statements were repeated in the e-mail dated 15th July, 2024 addressed by the then Advocate-on-Record for the petitioners to the Jail Authorities.

As far as petitioner no.1 is concerned, the order of furlough had not expired on 19th July, 2024. It is only in this case that the order dated 30th June, 2023 was passed which is impugned in the Writ Petition. No such order was passed in the case of other three petitioners. As far as petitioner no.1 is concerned, he will have to challenge the said order dated 30th June, 2023 by filing a writ petition under Article 226 of the Constitution of India before the High Court. As regards petitioner no.3, in the counter affidavit filed by the State, it is pointed out that his case is being taken up for consideration. The cases of petitioner nos.2 and 4 were not taken up as they have not completed 14 years of actual sentence.

We direct the State Government to consider the case of petitioner no.3 in accordance with the applicable policy. No relief is granted to petitioner nos.2 and 4.

The Writ Petition is dismissed. However, it will be open for the petitioner no.1 to challenge the order dated 30th June, 2023 by

filing a writ petition before the High Court.

A copy of IA No.205232/2024 shall be placed in the file of Writ Petition (Crl.) No.397/2023 which is listed on 24th September, 2024. This IA alleges that there are similar cases of suppression of material facts.

Pending applications stand disposed of accordingly.

WRIT PETITION (CRL.) NO.305/2024

In the first paragraph of the Writ Petition, it is averred that all the five petitioners have undergone actual sentence of more than 14 years. However, Ms. Archana Pathak Dave, learned ASG pointed out that the nominal rolls of different dates produced along with the counter affidavit show that on the date of filing of the Writ Petition, petitioner nos. 3 and 4 had not completed actual 14 years of sentence. However, Shri Rishi Malhotra, learned senior counsel appearing for the petitioners pointed out that in the synopsis, it is disclosed that petitioner no.4 had undergone actual sentence for 13 years and 07 months. So, at least, in respect of petitioner no.3, there is a completely false statement made in the Writ Petition that on the date of filing of the Writ Petition, he had completed actual 14 years of incarceration. The five petitioners have been convicted for different offences on different dates. However, on page I of the synopsis, it is stated thus:

"1995-2010 The petitioner herein undisputedly has been convicted predominantly u/s 302 IPC etc. and has been sentenced to life imprisonment."

However, the nominal rolls show that one petitioner has been convicted even for the offences under the Arms Act. Another petitioner has been convicted for the offences punishable under Sections 364A and 201 of the Indian Penal Code, 1860. In a petition seeking a writ of mandamus for premature release, the nature of offence is a very important consideration.

The learned senior counsel appearing for the petitioners further states that he is not pressing the Petition as far as petitioner no.4 is concerned as he has already surrendered. Now, petitioner no.3 has also completed 14 years of incarceration.

Ms. Archana Pathak Dave, learned ASG appearing for the State Government states that cases of petitioner nos.1, 2, 3 and 5 are under consideration. We direct the State Government to consider the case of the aforesaid four petitioners and pass an appropriate order in accordance with law.

Subject to what is directed above, the Writ Petition is dismissed.

Pending application stands disposed of accordingly.

(ASHISH KONDLE)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTER (NSH)