

**Reserved On:-** 23.05.2024

**Delivered On:-** 10.07.2024

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 7043 of 2024

**Petitioner :-** Munna

**Respondent :-** State Of Up. And 3 Others

**Counsel for Petitioner :-** Araf Khan, Lihazur Rahman Khan

**Counsel for Respondent :-** G.A.

**Hon'ble Siddharth, J.**

**Hon'ble Syed Qamar Hasan Rizvi, J.**

**(Delivered by Hon'ble Siddharth, J.)**

1. Heard Shri Araf Khan, learned counsel for the petitioner and learned A.G.A.

2. This writ petition has been filed praying for the following reliefs :-

*(i) Issue writ, order or direction in the nature of certiorari quashing the order dated 15.05.2017 with all consequential benefits.*

*(ii) Issue writ, order or direction in the nature of mandamus commanding the respondent nos. 2 and 4 to provisionally release the petitioner from the central jail, Agra till the pendency of the writ petition, as he is aged more than 79 years and has already undergone more than 25 years of imprisonment including remission as on 29.03.2024 with good conduct inside the jail.*

*(iii) Pass such order and further orders which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.*

*(iv) Award costs.*

3. The brief facts of the case are that the petitioner was convicted to undergo life imprisonment for committing the offences punishable under Sections 302, 149, 147 IPC in S.T. No. 227 of 1979, P.S.- Sadabad, District- Hathras, by the judgment and order dated 19.04.1980 which was confirmed by this court vide judgment and order dated 04.02.1999. After completing 25 years of incarceration in jail, including remission, the petitioner approached the Hon'ble Supreme Court by filing Writ Petition (Criminal) No. 20 of 2017 and the petitioner was released on bail by the Apex Court keeping in view his incarceration of about 18 years without remission and with remission, in jail by the order dated 17.01.2018.

4. However, the respondents despite admitting good conduct of the petitioner rejected his application for premature release by the order dated 15.05.2017. Consequently the Apex Court dismissed the aforesaid writ petition of the petitioner on 08.01.2024 granting liberty to the petitioner to approach the High Court for challenging the order passed by the state government dated 15.05.2017 which is the subject matter of challenge before this court.

5. Counsel for the petitioner submits that in compliance of the order of Apex Court dated 08.01.2024 petitioner was taken to the custody from his house on 19.03.2024 and is languishing in Central Jail, Agra since then. He has undergone more than 25 years of incarceration in jail, including of remission, hence, he is entitled to benefit of guidelines dated 26.09.2003 of the state government and the judgment of Apex Court in the case of *Rishidul Jafar @ Chota vs. State of U.P. and another, 2023 SCC Online (SC) 1201*.

6. Learned A.G.A has filed counter affidavit wherein nothing adverse against the petitioner has been stated. Only the impugned order passed by the state government order has been supported.

7. This court finds that the impugned order passed by the state government is only based on the finding that by granting premature release to the petitioner it will send wrong message regarding the judicial system to society. There is also possibility of petitioner committing further offence as per report of the jail authority. The physical and mental condition of applicant is sound and hence he is not entitled to be given benefit of U.P. Prisoners Release on Probation Act, 1938.

8. This court finds that the impugned order is stereotype order which is passed in almost every case by the state government without application of mind like in the present case. The order has been passed against the intent of section 2 of U.P. Prisoners Release on Probation Act, 1938 and against mandate of the Apex Court in the case of *Rishidul Jafar @ Chota (Supra)* wherein the Apex Court has held as follows :-

*"5. Before proceeding further judgment of Apex Court noted above needs consideration which is as follows:*

*"1. In this batch of cases which emanates from Uttar Pradesh, five hundred and twelve convicts who are undergoing a sentence of imprisonment for life seek premature release.*

*2. On 1 August 2018, the Government of Uttar Pradesh issued a policy governing premature release of convicts with the approval of the Governor under Article 161 of the Constitution. The policy is described as a 'Standing Policy regarding premature release of prisoners sentenced to life imprisonment on the occasion of every Republic Day (26th January)'. The policy sets out categories of convicts entitled to premature release. Among those categories is para 2(b). The translation provided by the Additional Advocate General is extracted below:*

*2(b). All male convicted prisoners sentenced to imprisonment for life whose crime is not covered by any of the sub-rule under prohibited category defined in para-3 below and who have undergone, including undertrial custody, sentence of 16 years without remission and 20 years with remission.?*

3. Prohibited categories? are spelt out in para 3 of the policy. Clause (vi) of the prohibited categories is set out below:

(vi) All such convicted prisoners sentenced to imprisonment for life who have been convicted for the crimes related to incidents of massacre (three or more than three murders).

4. Para 4 of the policy provided as follows:

4. All Senior Superintendent/Superintendent/ Superintendent In charge shall examine the eligibility of all such convicted prisoners sentenced to imprisonment for life detained in jails in terms of the prescribed policy/directions contained in the aforesaid paras and shall make available in the prescribed proforma enclosed herewith the proposal of premature release of all eligible prisoners to Zonal Deputy Inspector General of Prisons by 31st October every year.

5. Each Zonal Deputy Inspector General of Prisons was required to examine all proposals in light of the policy so as to ensure that no eligible person is left out of consideration. Each Zonal DIG had to submit the proposal to the Inspector General of Prisons annually by 15 November. The Inspector General of Prisons was further required to forward the proposal to the Government annually by 30 November. A Committee was constituted in terms of para 8 of the policy for examining and disposing all cases upon the receipt of the proposal. The Committee was required to submit its recommendations for premature release of convicted prisoners sentenced to imprisonment for life to the Government annually by 15 December on which the Government was to take a decision in terms of the prescribed procedure.

6. On 28 July 2021, an amendment was brought about to the policy. Para 2(b) of the earlier policy document dated 1 August 2018 was modified so as to provide that a convict undergoing imprisonment for life would not be released until the age of sixty years is attained. Para 2(b) as amended on 28 July 2021 was in the following terms:

2(b) Such male convicted prisoners sentenced to imprisonment for life and are incarcerated in prison, whose crime is not covered by any of the sub-rule under prohibited category defined in para-3 below and who have completed age of 60 years and have undergone, including undertrial custody, sentence of 16 years without remission and 20 years with remission.?

7. However, convicts falling within the prohibited category set out in para 3(vi) of the original policy document were granted a relaxation in the amended policy dated 28 July 2021. Para 2(g) of the amended policy dated 28 July 2021 is as follows:

*2(g) Such convicted prisoners sentenced to imprisonment for life and are incarcerated in prison, whose crime is covered by the sections mentioned in prohibited category in sub-rule-(vi), (viii) and (ix) of para- 3 below, and who have completed age of 60 years and have undergone, including undertrial custody, sentence of 25 years without remission and 30 years with remission.?*

8. The imposition of the requirement that a convict undergoing imprisonment for life would not be eligible for premature release until attaining the age of sixty years led to the institution of petitions under Article 32 of the Constitution before this Court.

The challenge was *inter alia* on the ground that the plea for premature release must be considered on the basis of the law as it stood on the date of conviction and that a subsequent policy which operates to restrict the ambit of a policy prevailing on the date of conviction must not be allowed to obstruct the plea for release. Moreover, it was urged that the requirement that a convict cannot be considered for premature release before the age of sixty would violate the right to life under Article 21 by subjecting a convict to long years of incarceration. In several judgments of this Court, including *State of Haryana Vs. Jagdish*, it has been held that an application for premature release has to be considered on the basis of the policy as it stood on the date when the accused was convicted of the offence by the trial court. A similar view was taken in *State of Haryana v Raj Kumar @ Bitu*.

9. Subsequently, on 27 May 2022, the policy dated 1 August 2018 (as amended on 28 July 2021) was further amended. The amendments are specific to paras 1, 2(b), 2(f) and 2(g) and by the insertion of para 12 in the policy dated 1 August 2018, as 1 (2010) 4 SCC 216 2 (2021) 9 SCC 292 amended. For the present purpose, it would suffice to note that the requirement that a convict undergoing life imprisonment could be considered for release only after attaining the age of sixty has been deleted. The amended clause in terms of the amendment dated 27 May 2022 reads as follows:

10. Moreover, as regards prisoners who fall in the prohibited category contained in para 3(vi), the relevant clause reads as follows:

*2(g) All such convicted prisoners sentenced to imprisonment for life and are incarcerated in prison, whose crime is covered by the sections mentioned in*

*prohibited category in sub-rule?(vi), (viii) and (ix) of para-3 below, and who have undergone, including undertrial custody, sentence of 25 years with excluding remission and 30 years including remission.*

*11. Following the amendment, counter affidavits were filed before this Court in several pending proceedings, including among them the following:*

*(i) Dev Nath Singh Vs. State of U.P.*

*(ii) Rajkumar Vs. The State of Uttar Pradesh*

*(iii) Brij Bhushan Vs. The State of Uttar Pradesh*

*3 Writ Petition (Crl) No 528 of 2021 decided on 21 February 2022 4 Writ Petition (Crl) No 36 of 2022 decided on 11 March 2022 5 Writ Petition (Crl) No 75 of 2022 decided on 14 March 2022.*

*12. The orders of this court in above petitions under Article 32 noted that the cases of the convicts undergoing life imprisonment would be dealt with in accordance with the policy as it existed prior to the amendment which was brought about on 28 July 2021.*

*13. In order to facilitate the disposal of this batch of cases, an order was passed by this Court on 24 August 2022 requiring a tabulated statement to be prepared dealing with:*

*(i) The offence for which the petitioners were convicted;*

*(ii) The date of the judgment of the trial court;*

*(iii) The year of the filing of the criminal appeal before the High Court;*

*(iv) The period of imprisonment undergone:*

*(a) Without remission; and*

*(b) With remission;*

*(v) Whether the petitioners are on bail; and*

*(vi) The current status of the application for premature release.*

14. Such a statement has been shared by counsel for the petitioners and has been shared with Ms Garima Prashad, AAG appearing on behalf of the State of Uttar Pradesh. The AAG has facilitated a due verification and submitted a statement containing the details of 512 prisoners covered by the present batch of cases, whose cases would require to be considered in terms of the policy. The statement is annexed to this order.6 6 Annexure-A

15. We have heard learned counsel appearing on behalf of the petitioners in the proceedings under Article 32 of the Constitution and Ms Garima Prashad, AAG.

16. The implementation of the policy for premature release has to be carried out in an objective and transparent manner as otherwise it would impinge on the constitutional guarantees under Articles 14 and 21. Many of these life convicts who have suffered long years of incarceration have few or no resources. Lack of literacy, education and social support structures impede their right to access legal remedies. Once the state has formulated its policy defining the terms for premature release, due consideration in terms of the policy must be given to all eligible convicts. The constitutional guarantees against arbitrary treatment and of the right to secure life and personal liberty must not be foreclosed by an unfair process of considering applications for premature release in terms of the policy.

17. Significantly, the policy has been amended to remove the requirement of convicts submitting an application for premature release and instead places the responsibility on the officers of the state to consider eligible prisoners. The prison administration, legal services authorities at the district and state level and officers of the police department and the state must diligently ensure that cases of eligible prisoners are considered on the basis of policy parameters. We have gained a distinct impression, based on the cases which have come before the court here and even earlier that there is a general apathy towards ensuring that the rights which have been made available to convicts who have served out their sentences in terms of the policy are realized. This results in the deprivation of liberty of those who are entitled to be released. They languish in overcrowded jails. Their poverty, illiteracy and disabilities occasioned by long years of incarceration are compounded by the absence of supportive social and legal structures. The promise of equality in our Constitution would not be fulfilled if liberty were to be conditional on an individual's resources, which unfortunately many of these cases provide hard evidence of. This situation must change and hence this court has had to step in. We now proceed to formulate peremptory directions.

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, 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.*

*19. The petitions are accordingly disposed of. A copy of the present judgment shall be transmitted also to the Secretary of the UP State Legal Services Authority.*

*20. In view of the disposal of the petitions, pending applications stand disposed of.”*

9. This court further finds that there is no such consideration in the impugned order as directed by the Apex Court. The petitioner is aged about 79 years and he has undergone total sentence, with remission, of above 25 years. He has not committed any offence affecting society at large. There is no chance of future recurrence of crime by the petitioner at such an advanced age.

10. In view of the above, impugned order dated 15.05.2017 passed by state government, respondent no. 1 is hereby quashed.

11. The respondent no. 1 is directed to take fresh decision on the application of petitioner within period of six weeks regarding premature release of petitioner by consideration of policy of state government dated 01.08.2018 provisions of U.P. Prisoners Release on Probation Act, 1938

and judgment of the Apex Court in the case of Rishidul Jafar @ Chota (Supra) by reasoned and speaking order and communicate the same to this court along with affidavit of a responsible officer of the state government.

12. Registrar (Compliance) is directed to communicate this order to the Principal Secretary (Home) Government of U.P., Lucknow within period of one week.

13. List this case again on **02.09.2024** among top-10 cases in the additional cause list.

**Order Date :- 10.07.2024**  
Rohit