IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 25.01.2021

\+ **W.P.(CRL) 1642/2020 & CRL.M.A. 13947/2020**

KARTIK SUBRAMANIAM ..... Petitioner

versus

UNION OF INDIA & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Ms. Warisha Farasat, Mr. Shourya Dasgupta, Mr. Bharat Gupta and Ms. Hafsa Khan, Advocates.

For the Respondents : Ms. Kamna Vohra, ASC for State.
Mr. Nawal Kishore Jha, Advocate for UOI/ R-1.
Mr. Ripudaman Bhardwaj, SPP for R-3/CBI with Mr. Kushagra Kumar, Advocate.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner – a convict serving life sentence – has filed the present petition impugning orders dated 26.05.2016, 29.06.2018 and 30.10.2019 issued by respondent no.1 declining to concur with the recommendation of the Sentence Review Board (hereinafter the

'SRB') and the Government of NCT of Delhi for his premature release from imprisonment.

2. The petitioner's premature release was recommended by the SRB and approved by the Lt. Governor of NCT of Delhi on four occasions. However, respondent no.1 did not concur with the said decision on the first three occasions and its decision on the recommendation made for the fourth time is pending consideration.

3. The petitioner claims that the decision of the Central Government to not concur with his premature release is arbitrary and unreasonable and contrary to the guidelines framed for the aforesaid purpose. It is contended that the impugned orders passed by the Central Government are unreasoned and therefore, liable to be set aside. The petitioner submits that he complies with the conditions as set out in the SRB Guidelines for premature release. His conduct during the period of his incarceration has been exemplary and has been recognized as such by the concerned authorities. The SRB had also found that he had lost his propensity to commit crime. It is submitted that in the given circumstances, there could be no possible objection to the petitioner's premature release. In addition, it is also submitted that the Central Government's consent for the petitioner's premature release is not mandatory.

Factual Context

4. On 16.03.2001, RC 4(E)/2001/SIU-VII/EOU-IV/EO-II was registered with the Central Bureau of Investigation (CBI), pursuant to

a complaint lodged by one Mrs. Rehamat Siddiqui, which was forwarded to the Central Bureau of Investigation (CBI) by the Indian Ambassador to the United Arab Emirates (UAE).

5. Upon the investigation being concluded, the chargesheet was filed on 14.06.2001 against four persons including the petitioner. On 01.07.2002, charges were framed against the accused. And, they were tried for the charges framed against them.

6. By a judgment dated 18.03.2005, the Trial Court convicted the petitioner under Section 120-B read with Sections 364A/365/368/324/506 of the Indian Penal Code, 1860 (hereinafter the 'IPC'). By an order on sentence dated 19.03.2005, the petitioner was sentenced to life imprisonment along with a fine of ₹5,000/- for committing the offences punishable under Section 120-B read with Sections 364A/365/368/324/506 of the IPC; (ii) imprisonment for life along with a fine of ₹5,000/- for the offence punishable under Section 364A of the IPC read with Section 120-B of the IPC; (iii) rigorous imprisonment for a period of five years along with a fine of ₹2,000/- for the offence punishable under Section 365 read with Section 120-B of the IPC; (iv) rigorous imprisonment for a period of five years along with a fine of ₹2,000/- for committing an offence punishable under Section 368 read with Section 120-B of the IPC; (v) rigorous imprisonment for a period of one year for committing an offence punishable under Section 324 read with Section 120-B of the IPC; and

(vi) rigorous imprisonment for six months for commission of an offence under Section 506 read with Section 120-B of the IPC.

7. The petitioner appealed against his conviction and the sentence awarded to him by filing an appeal before this Court (Crl. A. No. 355/2005). By a judgment dated 14.12.2007, this Court upheld the petitioner's conviction for committing an offence punishable under Section 120-B of the IPC read with Section 364 of the IPC and Section 364A of the IPC read with Section 120-B of the IPC. However, the petitioner's conviction for committing offences punishable under Sections 365/368/324/506 of the IPC read with Section 120-B of the IPC was set aside.

8. It is relevant to note that the petitioner was aged about twenty-six years at the time of committing the offence. As on 20.02.2020, the petitioner has served actual custody for a period of eighteen years, seven months and one day. During this period, he had also earned remission of six years, eleven months and fourteen days. As of date, the petitioner has already served more than twenty-six years of his prison sentence. This includes over nineteen years of actual incarceration.

9. In terms of the SRB Guidelines, the petitioner became eligible for premature release on 07.05.2017. In view of the above, the petitioner approached this Court by filing a Writ Petition (W. P. (Crl.) 2646/2015), *inter alia*, praying that he be directed to be released prematurely. The said petition was disposed of by an order dated

16.11.2015, whereby this Court directed the respondents to consider the petitioner's case for premature release.

10. Pursuant to the aforesaid order, the petitioner's case for premature release was considered by the SRB at its meeting held on 06.01.2016. The minutes of the said meeting indicate that the CBI as well as the police opposed the petitioner's premature release. In addition, the learned Sessions Judge, who was also a member of the SRB, opposed the petitioner's premature release. However, the Home Town Police and Chief Probation Officer, Delhi recommended the petitioner's premature release. The SRB also noted that at the relevant time, the petitioner had served prison sentence of nineteen years, seven months and twenty-one days including the remissions earned by him. He had availed parole on ten prior occasions and was granted furlough on four occasions. He had not misused his liberty and nothing adverse had been reported against him. The meeting had also noted that the petitioner had participated in educational, vocational and spiritual courses as well as welfare activities in jail. Considering the above, the SRB recommended the petitioner's premature release. The recommendation of the SRB was forwarded to the Central Government. However, by a letter dated 26.05.2016, the Central Government communicated its decision not to concur with the proposal of the Government of NCT for prematurely releasing the petitioner under Section 435 of the Cr.PC. The said letter is reproduced below:-

"By speed post

F.No.15/07/2016-Judl
Ministry of Home Affairs
Judicial Division

4th Floor, NDCC Building
Jai Singh Road, New Delhi-110001
Dated 26 May, 2016

To

The Deputy Director (Home)
Home (General) Department
Govt. of National Capital Territory of Delhi
5th Level, Delhi Secretariat
I.P. Estate, Delhi-110002

Subject: Premature release of two lifer convicts (investigated by CBI) namely Rakesh Saroha S/o Shri Raghubir Singh and Kartik Subramanian s/o Shri S. Krishnan, presently lodged confirmed at Tihar Central Jail, Delhi

Sir,

I am directed to refer to the letter of Home (General) Department, Government of National Capital Territory of Delhi No.F.18/102/2003/HG/PT-2016-III/022 dated 29.2.2016 on the subject mentioned above and to say that having regard to all facts and material placed on record by the Government of NCT of Delhi, including the objection to the premature release of the convicts by the CBI, Delhi police and Ld. Addl. Session Judge mentioned in the minutes of the Sentence Reviewing Board Meeting, the Central Government does not consider it to be a fit case for according concurrence to the proposal of the Govt. of NCT of Delhi under Section 435 of the Cr.PC.

2. This issues with the approval of the Competent Authority

Yours faithfully,
Sd/-
Manas Mandal
Under Secretary (Judicial)"

11. The said decision was communicated to the petitioner on 01.02.2017, pursuant to the directions issued by this Court in W.P.(CRL.) 2646/2015.

12. While the said petition was pending, the SRB once again considered the petitioner's case and recommended him for premature release. The relevant extracts of the meeting of the SRB held on 06.09.2017 reads as under:-

> "**01.KARTIK SUBRAMANIAM S/O SH. S. KRISHNAN --- AGE –43 Yrs.**
>
> **Sentence**: Kartik Subramanian s/o S. Krishnan is undergoing life imprisonment in case RC NO.SIB/2001-E-0004, U/S 120B r/w 364A IPC, P.S. CBI/SPE/SIV/VIII/New Delhi, for kidnapping of a person for ransom.
>
> **Sentence undergone excluding remission as on 30.06.17**: 16 years, 01 month and 23 days.
>
> **Sentence undergone including remission**: 21 years, 11 month and 21 days.
>
> **Release on Parole/Furlough**: I. Bail 03, Parole 08 times and Furlough 12 times.
>
> **Propensity for committing crime**: Nil

Police Report:

The police opposed his premature release in its report without any cogent reason, despite the fact that he remained out of jail on 23 occasions on parole/furlough.

Probation officer's Report:

The Probation Officer, Delhi has recommended his premature release as he has to take care of his family. His conduct in jail is satisfactory. He has Bakery work and Computer Applications in the jail.

After taking into account all the facts and circumstances of the case, the Board **RECOMMENDS** premature release of convict Kartik Subramaniam s/o S. Krishnan."

13. The aforesaid recommendation was approved by the Hon'ble Lt. Governor of Delhi on 12.01.2018. In view of the above, by an order dated 13.02.2018, this Court disposed of the aforesaid Writ Petition [*W.P.(CRL.) 2646/2015*] on the ground that it had become infructuous. However, this Court directed respondent no.1 (the Union of India) to consider the SRB's recommendation dated 06.09.2017 on its merits. It also granted liberty to the petitioner to make a representation and directed respondent no.1 to consider the same as well.

14. Pursuant to the aforesaid directions, the petitioner filed his representation dated 21.02.2018 before the Central Government. Thereafter, on 10.04.2018, the petitioner once again approached this Court by filing a Writ Petition (W.P. (CRL.) 1061/2018), impugning

an order dated 25.06.2015. It was petitioner's case that the said order was unreasoned and arbitrary and was, therefore, liable to be quashed.

15. Whilst the said petition was pending, respondent no.1 rejected the second recommendation made by the SRB/Government of NCT of Delhi by an order (Office Memorandum) dated 29.06.2018. The said Office Memorandum dated 29.06.2018 is set out below:-

F.No.15/07/2016-Judl. Cell-II
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya
****
17, Major Dhyanchand National Stadium,
India Gate, New Delhi-110002
Dated: June 29, 2018

OFFICE MEMORANDUM

Subject: Premature release of life convicts Kartik Subramaniam S/o Shri Krishnan and Rakesh Saroha S/o Sh. Raghubir Singh presently confined at Tihar Jail, Delhi

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The undersigned is directed to refer to the letter of House (General) Dept., Govt. of NCT of Delhi No.F.18/102/2003-HOME (G)/Pt-2016-III/3889 dated 21.07.2016 on the above subject and to say that having regard to facts and material placed on record by the Govt. of NCT Delhi, the Central Government does not consider it to be a fit case for according concurrence to the proposal of the Government of NCT Delhi u/s 435 of the Cr.PC.

2. This issues with the approval of the Competent Authority.

Yours faithfully

Sd/-
(Manas Mondal)
Under Secretary (Judicial)
Tel-23094422

16. The petitioner sought to impugn the aforesaid Office Memorandum dated 29.06.2018, by seeking to amend the pending Writ Petition (W.P.(Crl.) 1061/2018). However, the said Writ Petition was withdrawn on 20.08.2018. The petitioner had served more than twenty-five years of his prison sentence. The petitioner claimed that his custody beyond the said period was illegal and therefore, withdrew the said Writ Petition in order to file a petition seeking a writ of habeas corpus.

17. Thereafter, on 27.05.2019, the petitioner filed a petition [W.P. (Crl.) 1606/2019] seeking the writ of habeas corpus. While the said petition was pending, the petitioner also secured an order dated 06.09.2018 from the Hon'ble Supreme Court in W.P. (CRL.) 326/2018 captioned '*Kartik Subramanium v. Union of India*', allowing the petitioner to be moved to a semi-open jail.

18. In the meanwhile, on 19.07.2019, the SRB once again recommended the petitioner's case for premature release. The same was approved by the Hon'ble Lt. Governor of Delhi on 11.09.2019. The said decision was also forwarded to the Central Government. And, by an order dated 13.09.2019 passed in W.P.(Crl.)1606/2019,

this Court once again directed the Central Government to consider the said recommendation.

19. By an order 30.10.2019 (which is impugned herein), respondent no.1 once again rejected the said recommendation and declined to concur with the decision of the Government of NCT of Delhi to prematurely release the petitioner. The said order is reproduced below:-

"F.No.15/07/2016-Judl.Cell-II
Government of India
Ministry of Home Affairs
(Judicial Wing, CS Division)

Major Dhyan Chand Stadium
2nd Floor, India Gate, New Delhi
Dated 30th October, 2019

ORDER

"**WHEREAS**, the Government of NCT of Delhi forwarded the case of remission of sentence under section 435 of the Cr.P.C. in respect of two life convicts namely Rakesh Saraha S/o Shri Raghubir Singh and Kartik Subramanian S/o Shri Krishnan to the Ministry of Home Affairs vide letter No.18/102/2003 HG/PT-2016-III/5267 dated 11.09.2019;

AND WHEREAS, the Hon'ble High Court of Delhi vide order dated 13.09.2019 in W.P.(Crl.) No.1606/2019 has directed the Ministry of Home Affairs to place a copy of the order proposed to be passed by them on record, before the next date of hearing;

AND WHEREAS, the convicts are undergoing sentence of life imprisonment for the offence of kidnapping a man for ransom;

AND WHEREAS, the case has been forwarded to the Ministry of Home Affairs by the Government of NCT of Delhi under Section 435 of the Cr.P.C.

AND WHEREAS, the instant case was investigated by the CBI and the CBI vide letter no.1621/RC SIU-8/2001 E-0004/EOU-IV dated -01.03.2017 recommended that the sentence awarded by the competent court to both the convicts is required to be completed in any case and purpose of award of sentence for life will be fruitless due to premature release of both the convicts.

AND WHEREAS, the Ministry of Home Affairs again examined the case of premature release of convicts Rakesh Saraha and Kartik Subramaniam and it was noted that no new facts have emerged in the proposal of the Government of NCT of Delhi warranting reconsideration of its earlier decision;

NOW THEREFORE, the Central Government, in pursuance of section 435 of the Code of Criminal Procedure, 1973, do not concur with the proposal for premature release of the two life convicts namely, Rakesh Saraha S/o Shri Raghubir Singh and Kartik Subramanian S/o Shri S. Krishnan.

Sd/-
NITA ARYA)
Under Secretary (Judicial)
Tele: 23075106

The Deputy Secretary
Home (General) Department
Government of NCT of Delhi
5th Level, Delhi Secretariat
I.P. Estate, Delhi"

20. The petitioner amended his Writ Petition *(W.P.(CRL.) 1606/2019)* to impugn the said order dated 30.10.2019. While the matter was pending before the Division Bench of this Court, the Hon'ble Supreme Court rendered a decision on 23.01.2020 in ***The***

Home Secretary (Prison) and Ors. v. H. Nilofer Nisha*: *Crl. A. No. 144 of 2020 holding that a petition seeking a writ of habeas corpus would not be an appropriate remedy for seeking premature/early release of a convicted prisoner. The Supreme Court held that a relief in this regard would be in the nature of seeking a writ of certiorari for quashing the orders rejecting the premature release of a prisoner.

21. In view of the aforesaid decision, the petitioner withdrew his Writ Petition – W.P.(Crl.) 1606/2019 – on 20.03.2020 with liberty to file an appropriate petition.

22. Prior to that, the SRB once again (now, for the fourth time) considered the petitioner's case for his premature release and on 20.02.2020 recommended the same. The said recommendation was also approved by the Hon'ble Lt. Governor of Delhi on 08.04.2020 and the matter was once again forwarded to the Central Government.

23. This Court is informed that as of yet no decision has been rendered by the Central Government in this regard.

Submissions

24. Ms. Warisha Farasat, learned counsel appearing for the petitioner assailed the impugned orders, essentially, on three fronts. First, she submitted that the impugned orders were unreasoned and therefore, were liable to be set aside. She relied upon the decision of the Supreme Court in ***The Home Secretary (Prison) and Ors. v. H. Nilofer Nisha*** (*supra*), in support of her contention that the concerned

authorities must pass a reasoned order in case they refuse to grant a prisoner the benefit under a scheme for a premature release. Second, she submitted that the Central Government's consent was not required in the present case. She submitted that in certain cases where the investigation was conducted by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946, or by any other agency empowered to investigate into an offence under any Central Act other than the Code of Criminal Procedure, 1973 (hereafter the 'Cr.PC'), an order commuting the sentence could not be passed without consultation with the Central Government. She submitted that prior to 02.12.2015, the expression 'consultation' as used in Section 435 of the Cr.PC could not be construed to mean 'consent'. She stated that the Constitution Bench of the Supreme Court had in ***Union of India v. V. Sriharan @ Murugan and Ors.*: *(2016) 7 SCC 1***, construed the expression "consultation" as used in Section 435 of the Cr.PC to mean "consent" but the said decision was rendered on 02.12.2015 and could not be applied retrospectively. She reasoned that the said decision was rendered after the petitioner had become eligible for his premature release. And, since the said decision had the effect of adversely affecting his substantive rights, it could not be applied retrospectively. She relied on the decisions of the Supreme Court in ***State of Haryana & Ors. v. Balwan*: *(1999) 7 SCC 355***; ***State of Haryana v. Mahender Singh & Ors.*: *(2007) 13 SCC 606***; ***State of Haryana v. Bhup Singh & Ors.*: *(2009) 2 SCC 268***; and ***Gurmeet Singh v. State of Punjab & Ors.*: *Crl. W.P. 1281/2016 decided on 15.02.2018***.

25. Next, she submitted that even if the concurrence of the Central Government is held to be necessary, the Central Government is also required to follow the SRB Guidelines as the same had been lifted from the guidelines set out by the National Human Rights Commission in its proceedings dated 20.10.1999.

26. Next, she submitted that the impugned decision of the Central Government to not concur with the SRB's recommendation for premature release of the petitioner is contrary to the decision of the Supreme Court in ***Laxman Naskar v. Union of India & Ors*: *(2000) 2 SCC 595***.

27. Ms. Farasat also referred to the various decisions of the Supreme Court including in ***Zahid Hussein & Ors. v. State of West Bengal & Anr.*: *(2001) 3 SCC 750*** and ***State of Haryana & Ors. v. Jagdish***: ***(2010) 4 SCC 216***, in support of her contentions as to the parameters required to be considered by the concerned authorities for deciding the question of premature release of the petitioner

Reasons and Conclusion

28. The first and foremost question to be addressed is whether the consent of the Central Government is mandatory for commuting the sentence awarded to the petitioner.

29. Section 432 of the Cr.PC empowers the appropriate government to suspend the execution of a sentence or remit whole or any part of the punishment awarded to any person. Section 433 of the Cr.PC

empowers the appropriate government to commute the sentence awarded to any person. Sub-section (7) of Section 432 of the Cr.PC provides that the expression 'appropriate government' as used in Sections 432 and 433 of the Cr.PC would be the Central Government in case the sentence is for an offence against any law relating to a matter to which the executive power of the union extends. In other cases, the State Government would be the appropriate government. Section 434 of the Cr.PC provides that the powers conferred by Section 432 and 433 of the Cr.PC upon the State Government may, in the case of a sentence of death, also be exercised by the Central Government.

30. Section 435 of the Cr.PC prohibits the State Government to exercise powers conferred under Sections 432 and 433 of the Cr.PC in certain cases, except after 'consultation' with the Central Government.

31. Section 435 of Cr.PC is relevant and is set out below:-

> "435. State Government to act after consultation with Central Government in certain cases.
>
> (1) The powers conferred by sections 432 and 433 upon the State Government to remit or commute a sentence, in any case where the sentence Is for an offence-
>
> > (a) which was investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, or

(b) which involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(c) which was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, shall not be exercised by the State Government except after consultation with the Central Government.

(2) No order of suspension, remission or commutation of sentences passed by the State Government in relation to a person, who has been convicted of offences, some of which relate to matters to which the executive power of the Union extends, and who has been sentenced to separate terms of imprisonment which are to run concurrently, shall have effect unless an order for the suspension, remission or commutation, as the case may be, of such sentences has also been made by the Central Government in relation to the offences committed by such person with regard to matters to which the executive power of the Union extends."

32. In the present case, the petitioner was apprehended in a joint operation conducted by the CBI and the State Police. It is admitted that the FIR in question was registered with the CBI and the case was also investigated by the CBI. Thus, undisputedly, the provisions of Section 435 of the Cr.PC are applicable. The question whether the concurrence of the Central Government is required in such cases is no

longer *res integra*. The Supreme Court in ***Union of India v. V. Sriharan @ Murugan & Ors.*: (2016) 7 SCC 1** has held as under:-

> "174. …….it is, therefore, imperative that it is always safe and appropriate to hold that in those situations covered by clauses (a) to (c) of Section 435(1) falling within the jurisdiction of the Central Government, it will assume primacy and consequently the process of "consultation" should in reality be held as the requirement of "concurrence."

33. It is apparent from the above that the Supreme Court has merely interpreted the provisions of Section 435 of the Cr.PC as enacted; it has not set down any law, which differs from that enacted by the Parliament. Thus, the contention that the decision in ***Union of India v. Sriharan @ Murugan*** (*supra*) would be applicable prospectively from the date on which the said decision was rendered is without any merit. A statute does not become operative from the date on which it is interpreted. It comes into force on the date of its enactment, unless otherwise specified.

34. The reliance placed by the learned counsel for the petitioner on the decisions of the Supreme Court in ***State of Haryana & Ors. v. Balwan*** (*supra*), ***State of Haryana v. Mahender Singh*** (*supra*), and ***State of Haryana v. Bhup Singh & Ors.*** (*supra*), are misplaced.

35. In ***State of Haryana & Ors. v. Balwan*** *(supra)* and other connected matters, the Supreme Court rejected the contention that the case of a convict for premature release is to be considered on the basis of the government policy/instruction, which was in force on the date,

when the convict was convicted. The Supreme Court reiterated that by earning remissions, a life convict does not acquire a right to be released prematurely. However, if a government has framed any rule or made any scheme for an early release of such a convict then those rules and schemes have to be treated as guidelines for exercising powers under Article 161 of the Constitution of India. It is in this context, that the Supreme Court held that since the convict had acquired a right to have his case put up by the prison authorities to the concerned authority for considering his release in exercise of powers under Article 161 of the Constitution of India; it was apposite to treat the case of such convicts under the government decision/instructions, which were prevalent at the time when the case of the convict was required to be put up before the Governor, under Article 161 of the Constitution of India. This case is not an authority for the proposition that the decision of a court interpreting a statutory provision would necessarily have to be applied prospectively.

36. In ***State of Haryana v. Mahender Singh*** (*supra*), the Supreme Court once again reiterated that a convict does not have any constitutional right for obtaining remission in a sentence. However, he has a legal right if it emanates from any statutory acts or rules made thereunder. The Court further observed that whenever a policy decision is made, the persons must be treated equally in terms thereof. It was further observed that the applicable policy decision would be the policy as was prevalent at the time of conviction. Plainly, this is also not a decision which supports the contention that a statutory

interpretation of a statute must be applied prospectively. The decision in the case of ***Union of India v. Sriharan @ Murugan*** (*supra*) did not result in any change of policy. The said decision merely interpreted the statutory expression as used in Section 435 of the Cr.PC.

37. In ***Bhup Singh*** (*supra*), the Supreme Court held that the right to seek remission of sentence would be under the law as prevailing on the date of the judgment of conviction. This case is of little relevance in the facts of the present case.

38. Thus, the concurrence of the Central Government for commuting or remitting the petitioner's sentence is mandatory.

39. The next question to be examined is whether the decision of the Central Government in declining to concur with the State Government of NCT of Delhi and the recommendations of the SRB to prematurely release the petitioner, is arbitrary and unreasonable.

40. Undisputedly, the petitioner has a right to be considered for premature release. In ***State of Haryana v. Mahender Singh*** (*supra*), the Supreme Court had observed as under:-

> "38. A right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder. Although no convict can be said to have any constitutional right for obtaining remission in his sentence, he in view of the policy decision itself must be held to

> have a right to be considered therefor. Whether by reason of a statutory rule or otherwise if a policy decision has been laid down, the persons who come within the purview thereof are entitled to be treated equally. (*State of Mysore* v. *H. Srinivasmurthy* [(1976) 1 SCC 817: 1976 SCC (L&S) 126])".

41. The decision of the Central Government to not concur with the recommendation for the premature release of the petitioner must be examined in the context of the petitioner's right to be so considered. As noticed above, the appropriate government has the power to suspend or remit the sentence under Section 432 of the Cr.PC and to commute the sentence under Section 433 of the Cr.PC.

42. Although the powers conferred under Sections 432 and 433 of the Cr.PC are discretionary, it is well settled that wherever discretion is conferred, the authority on which it is conferred must exercise it if the purposes for which such power is granted, are met. A statutory power is also coupled with a duty to exercise the same for the purpose for which it is conferred.

43. In terms of Section 435 of the Cr.PC, a State Government is prohibited from exercising powers conferred under Sections 432 and 433 of the Cr.PC to remit or commute a sentence in certain cases, except after consultation with the Central Government. As noticed above, the requirement of consultation with a Central Government has been interpreted to mean with its consent. Therefore, the sentence of a prisoner, who has been sentenced for an offence (i) which was

investigated by the CBI or by any other agency empowered to investigate into an offence under any Central Act other than the Cr.PC; or (ii) where the person has been convicted of an offence involving misappropriation or destruction or damage to any property belonging to the Central Government; or (iii) where any offence has been committed by the person in service of the Central Government while purporting to act in discharge of his official duty, cannot be suspended, remitted or commuted without the consent of the Central Government. However, it is implicit that the said consent cannot be arbitrarily or unreasonably withheld. It is well settled that all State actions must be informed by reasons and cannot be arbitrary. Considering that such decisions of the Central Government concern the right to life and liberty, it is imperative that such a decision also stand the test of reasonableness on the anvil of Article 14 of the Constitution of India.

44. In ***Kasturi Lal Lakshmi Reddy*** v. ***State of J&K: (1980) 4 SCC 1***, the Supreme Court has observed as under:-

> "12….The concept of reasonableness in fact pervades the entire constitutional scheme. The interaction of Articles 14, 19 and 21 analysed by this Court in *Maneka Gandhi* v. *Union of India* [(1978) 1 SCC 248 : (1978) 2 SCR 621] clearly demonstrates that the requirement of reasonableness runs like a golden thread through the entire fabric of fundamental rights and, as several decisions of this Court show, this concept of reasonableness finds its positive manifestation and expression in the lofty ideal of social and economic justice which inspires and animates the directive

> principles. It has been laid down by this Court in *E. P. Royappa* v. *State of Tamil Nadu* [(1974) 4 SCC 3 : (1974) 2 SCR 348] and *Maneka Gandhi case* [(1978) 1 SCC 248 : (1978) 2 SCR 621] that Article 14 strikes at arbitrariness in State action and since the principle of reasonableness and rationality, which is legally as well as philosophically an essential element of equality or non-arbitrariness, is projected by this Article, it must characterise every governmental action, whether it be under the authority of law or in exercise of executive power without making of law. So also the concept of reasonableness runs through the totality of Article 19 and requires that restrictions on the freedoms of the citizen, in order to be permissible, must at the best be reasonable. Similarly Article 21 in the full plenitude of its activist magnitude as discovered by *Maneka Gandhi case* [(1978) 1 SCC 248 : (1978) 2 SCR 621] insists that no one shall be deprived of his life or personal liberty except in accordance with procedure established by law and such procedure must be *reasonable*, fair and just".

45. In ***Maru Ram v. Union of India& Ors.: (1981) 1 SCC 107***, the Supreme Court considered a challenge to the enactment of Section 433-A of the Cr.PC, *inter alia*, on the ground it is violative of Articles 72 and 161 of the Constitution of India. The Court rejected the said challenge while observing that "*the source is different, the substance is different, the strength is different, although the stream may be flowing along the same bed. We see the two powers as far from being identical, and, obviously, the constitutional power is "untouchable" and "unapproachable" and cannot suffer the vicissitudes of simple legislative processes.*".

46. Even though the Supreme Court noticed that the powers of the State under Articles 72 and 161of the Constitution of India stand on a much higher footing; it emphasized that the said power too could not be exercised arbitrarily and must meet the discipline of Article 14 of the Constitution of India. The relevant extract of the said decision is as under:-

> "62. An issue of deeper import demands our consideration at this stage of the discussion. Wide as the power of pardon, commutation and release (Articles 72 and 161) is, it cannot run riot; for no legal power can run unruly like John Gilpin on the horse but must keep sensibly to a steady course. Here, we come upon the second constitutional fundamental which underlies the submissions of counsel. It is that all *public power*, including constitutional power, shall never be exercisable arbitrarily or mala fide and, ordinarily, guidelines for fair and equal execution are guarantors of the valid play of power. We proceed on the basis that these axioms are valid in our constitutional order.
>
> 63. The jurisprudence of constitutionally canalised power as spelt out in the second proposition also did not meet with serious resistance from the learned Solicitor-General and, if we may say so rightly. Article 14 is an expression of the egalitarian spirit of the Constitution and is a clear pointer that arbitrariness is anathema under our system. It necessarily follows that the power to pardon, grant remission and commutation, being of the greatest moment for the liberty of the citizen, cannot be a law unto itself but must be informed by the finer canons of constitutionalism. In the *International Airport Authority case* [*RD*

Shetty v. *International Airport Authority*, (1979) 3 SCC 489, 511-512] this Court stated: (SCC pp. 511-12, paras 20-21)

> "The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.
>
> This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decisions of this Court in *E.P. Royappa* v. *State of Tamil Nadu* [(1974) 4 SCC 3 : 1974 SCC (L&S) 165 : (1974) 2 SCR 348] and *Maneka Gandhi* v. *Union of India* [Stroud's Judicial Dictionary Vol 4, 3rd Edn., p. 2836] that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory; it must not be guided by any extraneous or irrelevant considerations, because that would be, denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action,

> whether it be under authority of law or in exercise of executive power without making of law."

Mathew, J. in *V. Punnen Thomas* v. *State of Kerala* [AIR 1969 Ker 81 : 1968 Ker LJ 619 : 1968 Ker LT 800] observed:

> "The Government, is not and should not be as free as an individual in selecting the recipients for its largesse. Whatever its activity, the government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal."

If we excerpt again from the *Airport Authority case* [(1979) 3 SCC 489, 504, 505] : (SCC pp. 504 & 505 paras 10 & 11)

> "Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his *The Law of the Constitution* or the definition given by Hayek in his *Road to Serfdom and Constitution of Liberty* or the exposition set forth by Harry Jones in his *The Rule of Law and the Welfare State*, there is as pointed out by Mathew, J., in his article on *The Welfare State, Rule of Law and Natural Justice* in Democracy, Equality and Freedom [Upendra Baxi, Edn : Eastern Book Co., Lucknow (1978), p. 28] "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over

> the interests of the individual. Every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affectation of some right or denial of some privilege.
>
> ... The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largesse in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Prof Reich in an especially stimulating article on *The New Property* in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised". The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the Government when it acts in the matter of granting largesse and it cannot act arbitrarily. It does not stand in the same position as a private individual."

It is the pride of our constitutional order that all power, whatever its source, must, in its exercise, anathematise arbitrariness and obey standards and guidelines intelligible and intelligent and integrated with the manifest purpose of the power. From this angle even the power to pardon, commute or remit is subject to the wholesome creed that guidelines should govern the exercise even of presidential power."

47. Plainly, in view of the above, the impugned orders passed by the Central Government must be informed by reason. In cases where

the Central Government declines its consent, it must be on consideration of relevant factors. Ms. Farasat had earnestly contended that the Guidelines issued by the Government of NCT of Delhi for the SRB to make recommendations for the premature release of the prisoners undergoing life sentence would be binding on the Central Government. Undeniably, the considerations referred to in the said Guidelines are relevant for the purposes of deciding whether an eligible prisoner ought to be released prematurely. The said Guidelines also have the imprimatur of the National Human Rights Commission as is apparent from the opening paragraph of the Order dated 16.07.2004 issued by the Government of NCT of Delhi (SRB Guidelines), which provides for constitution of the SRB and embodies the scheme for remission of sentences.

48. In terms of the SRB Guidelines, every convicted prisoner, who is sentenced to life imprisonment and is covered under the provisions of Section 433-A of the Cr.PC, would be eligible for being considered for premature release from prison immediately after serving sentence of fourteen years of actual imprisonment (without remission) and the SRB would take an appropriate decision in this regard after considering "*the circumstances in which the crime was committed and other relevant factors such as: (a) whether the convict has lost his potential for committing crime considering his overall conduct in jail during the 14-year incarceration; (b) the possibility of reclaiming the convict as a useful member of the society; and (c) socio-economic condition of the convict's family*".

49. As is apparent from its plain language, the said factors are relevant but are not exhaustive. Thus, it is also open for the SRB to take into account other factors, which it considers relevant. Plainly, the said guidelines would not be binding on the Central Government. However, as noticed above, the Central Government cannot withhold its consent arbitrarily and its decision must be informed by reason. Thus, it is open for the Central Government to take into account factors that it considers relevant in deciding whether the prisoner who has been sentenced to life, ought to be released prematurely.

50. There is no dispute that factors as mentioned in the said order dated 16.07.2004 (the SRB Guidelines) are duly satisfied in the case of the petitioner.

51. At this stage, it is relevant to note that the petitioner was placed in judicial custody on 18.03.2001. Prior to that he had completed his degree course as a Bachelor of Science from the Delhi University. He had obtained his Post Graduate Diploma in Advertising Management from the National Institute of Advertising Society for Education and Development of Advertising and Communication in the year 1997. Prior to his arrest, he had trained with Ammirati Puris Lintas, Delhi as an Executive Trainee for a period of two months. Thereafter, he had worked as a Management Trainee with Rediffusion-Dentsu Young and Rubicam Limited, Delhi for a period of over one year and three months. At the time of arrest, he was employed with Hindustan Thompson, Delhi as an Accounts Representative. Thus, there is no

doubt that the petitioner has the relevant qualifications to become a productive member of society.

52. Undisputedly, the petitioner's conduct in the jail has been exemplary. During the petitioner's incarceration, his conduct has been appreciated by various jail authorities, who have certified that his conduct in jail has been exemplary. He has been issued numerous certificates for his conduct and work in jail. On 06.10.2008, the Superintendent of Jail had awarded him a certificate, which reads as under:-

> "This CERTIFICATE is awarded to CONVICT Kartik S/o Sh S. Krishnan for exemplary conduct and integrity of the highest order. His Faithfulness to the Jail Administration has earned the admission of Staff and prisoners alike."

53. On 24.08.2011, the petitioner was once again awarded a certificate of recognition by the Jail Superintendent appreciating his excellent work as a *sewadar* in the Literacy Programme "*Padho aur Padhao*". On 24.09.2011, the Jail Superintendent issued another certificate in appreciation of his "*excellent contribution in jail factory and reformation and rehabilitation of other convicts*". On 30.01.2012, the petitioner was awarded a certificate for in "*appreciation of outstanding conduct and contribution towards working of jail factory*". On 15.08.2012, the petitioner was awarded another certificate in "*appreciation of commendable work in office and factory administration*". He was also awarded a cash prize of ₹350/-. On

26.01.2013, the petitioner was awarded a certificate in "*appreciation of excellent contribution in Bakery Unit of jail factory*".

54. On 15.06.2013, the petitioner was awarded a letter of appreciation by the Jail Superintendent, which reads as under:-

> "I would like to convey my appreciation to Kartik Subramaniam for his efforts, and assistance in the running of Bakery unit of Jail Factory and contribution in the day-to-day functioning in office as well. Jail Factory including Bakery has shown tremendous improvement in all spheres and the sales this year i.e. 2012-2013 has reached exponential heights. The inputs provided by him,his counselling to fellow inmates to work and perform better and guiding them towards the path of reformation and rehabilitation have been commendable and noteworthy.
>
> He also assists in the administrative works of convict office and Line office. He also draws attention to the genuine problems faced by fellow inmates such as delay in the verification process of sureties through wireless messaging and other legitimate problems. He acts as the interface between the Jail administration and fellow inmates.
>
> His excellence conduct in jail deserves special mention.
>
> I would like him to keep up the good work in future and wish him success in his endeavors."

55. On 15.08.2013, he was awarded yet another certificate in "*appreciation of exemplary conduct and outstanding work in bakery unit of jail factory*". On 23.09.2013, he was awarded another certificate in "*appreciation of commendable work during the visit of delegates of APCCA 2013 on 23.09.2013*". He was also issued a letter

of appreciation dated 25.09.2013 for his assistance in the successful culmination of the visit of the delegates of Asia Pacific Conference for Correctional Administrators (APCCA) in 2013.

56. On 04.11.2013, the petitioner was granted special remission under Rule 80(2)(B), Part VI of Delhi Jail Manual by the Deputy Inspector General of Prisons for a period of forty-five days. The relevant extract of the letter granting him special remission for a period of forty-five days reads as under:-

> "The applicant has been appreciated for his efforts and assistance in the running of Bakery Unit in Jail Factory and contribution in the day-to-day functioning in office as well Jail factory including Bakery has shown tremendous improvement in all spheres and the sales this year i.e. 2012-13 has reached exponential heights. The inputs provided by the applicant, counselling to fellow inmates to work and perform better and guiding them towards the path of reformation and rehabilitation have been recognized.
>
> The Applicant also assists in the administrative works of Convict Office and Line Office.
>
> The Applicant was recently awarded an appreciation letter by SCJ-2 for his handing and contribution towards the successful hosting of delegates of Asian Pacific Conference or Correctional Administration (APCCA), 2013 in this Jail, held on 23.09.2013. this aforesaid contribution was also appreciated by the worthy DIG(P).
>
> In view of his "Special Excellence and Work of Good Quality" and for his continuous and uniform good work over the years, his work needs to be recognized by granting Special Remission for a period of 45 days / annum. Considering his good conduct and work, file is

> submitted for consideration of grant of "Special Remission" (SR) of 45 days / annum for the period mentioned below (last two convict years)."

57. On 26.01.2014, the petitioner was awarded a certificate of recognition from the Jail Superintendent, in "*appreciation of good conduct and hard work on the occasion of Republic Day, 2014*".

58. On 19.10.2014, the petitioner was granted a special remission of forty-five days under Rule 80(2)(B), Part VI of the Delhi Jail Manual.

59. In addition to the above, the petitioner has also been issued several letters/certificates in appreciation of his conduct. The petitioner had also participated in various programs including quizzes, organized on three occasions. In addition to the certificates/letters of appreciation, as noted above, the petitioner was also issued several other certificates. It is not necessary to refer to them in any detail. However, suffice it to state that the petitioner's conduct in jail has been exemplary and his conduct and participation in various activities has been appreciated by the concerned jail authorities.

60. As noticed above, his conduct in the jail premises has been exemplary. Apart from that he has also proved himself useful in running the bakery unit in the jail factory and has also assisted in organizing various events. The letters of appreciation issued to the petitioner by the jail authorities as well as the special remission granted to him on two occasions clearly establishe the same.

61. It is also relevant to note that as per the directions of the Jail Superintendent, enquiries (social investigation) were made from the petitioner's family and neighbours. The relevant extract of his social investigation report dated 04.04.2015, is set out below:-

> "In connection with the inquiry only the convict father and four neighbours came forwarded to give their statement regarding the nature and habits of the convict. The following is the summary of the investigation:
>
> 1. Convict Kartik (Now aged 41 years) B.Sc. & M.B.A. and is now life Convict under custody in Central Jail No.-2, Tihar-Delhi.
>
> 2. As per the statement of father he has 01 son and 01 daughter convict Kartik is the elder son in his family.
>
> 3. As per the statement of his father and the neighbour that behavior of convict is fine. His father stated that there is no previous complaint in this regard except above FIR.
>
> 4. Four neighbours came forward to record their statement about the nature and habits of the convict. They stated that the convict nature and habits are fine and there has been no previous compliant.
>
> 5. As per the father statement that that convict Kartik wants to work in any private company in future.
>
> In view of the investigation and based on the statement of the convict's father and four neighbours, it appears that the nature and habits of the convict Kartik is fine."

62. The petitioner's father is now aged about eighty-one years and it has also been verified that he is being treated for gallbladder cancer.

63. In the given facts and circumstances of the case, the recommendation of the SRB for premature release of the petitioner is a well-considered one and unless there is any relevant reason to dissent from the same, the same is ought to be accepted.

64. In this case, the impugned orders declining to consent for a premature release of the petitioner are unreasoned. In the impugned order dated 26.05.2016, the Central Government had stated that it did not consider the petitioner's case to be a fit case for according concurrence as the petitioner's premature release had been objected to by the CBI as well as the learned Additional Sessions Judge, who was a part of the SRB. As stated above, SRB had recommended the petitioner's release on three occasions thereafter. However, the CBI/police opposed the petitioner's release.

65. It is important to note that CBI has not provided any cogent reason for opposing the petitioner's premature release. The only reason provided by them is that the petitioner had been sentenced to life imprisonment and the Supreme Court has in a number of decisions, explained that the life sentence would mean the natural life of the convict. This Court has also examined the counter affidavit filed by the CBI and the only objection for the petitioner's premature release as articulated therein reads as under:-

> "The sentence awarded by the competent court to convict/petitioner is required to be completed and purpose of award of sentence for life will be fruitless due to premature release of convict/petitioner."

66. Plainly, the above reason is, *ex-facie*, untenable. This is so for the simple reason that if the said reason is to be followed then no convict, who had been awarded life imprisonment, can be released prematurely. And, it is not the Central Government's stand that powers under Section 435 of the Cr.PC should not be exercised in any case.

67. In ***Laxman Naskar v. Union of India & Ors.*** (*supra*), the Supreme Court highlighted the conduct of the convict; whether the convict has lost the potential for committing a crime; whether there is any fruitful purpose in confining him any further; and his socio-economic condition as the relevant factors for considering the convict's premature release. There is no dispute that the SRB had considered the aforesaid factors in making its recommendation. And, it is apparent that neither respondent no. 1 nor the CBI had taken these factors into account in arriving at their decision to oppose the petitioner's premature release.

68. It is also relevant to note that the CBI had also consistently opposed the petitioner's release on parole on the ground that a co-convict had absconded after being released on parole. However, the petitioner was released on parole and furlough on several occasions and there has been no report that he had misused his liberty.

69. It is clear from the above that CBI has opposed the petitioner's release without examining the petitioner's conduct and other relevant facts, which clearly indicate that the petitioner has accepted the reformative process as is reflected by his exemplary conduct. There is also no doubt that he also has a propensity to serve as a useful member of society.

70. In view of the above, it is clear that the decision of the Central Government, to not concur with the recommendations of the SRB for premature release of the petitioner, is arbitrary and without considering any relevant factors. It is without application of mind and is not informed by reason. Plainly, the impugned orders cannot be sustained.

71. Accordingly, the impugned orders are set aside.

72. Since this Court is unable to find any cogent reasons for respondent no. 1 to dissent from the recommendation of the SRB, this Court directs the respondents to forthwith process the petitioner's premature release in terms of the recommendations of the SRB and as approved the Hon'ble Lt. Governor of Delhi.

73. The petition is allowed in the aforesaid terms. The pending application is also disposed of.

VIBHU BAKHRU, J

JANUARY 25, 2021
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