

(1985) 07 DEL CK 0025

In the Delhi High Court

Case No : Criminal Writ Appeal No. 129 of 1985

N.S. Jain

APPELLANT

Vs

The Superintendent, Central Jail

RESPONDENT

Date of Decision : 22-07-1985

Acts Referred:

Citation : (1985) 9 DRJ 349 : (1986) 1 RCR(Criminal) 23 : (1985) RLR 502

Hon'ble Judges : Prakash Narain, C.J;N.N. Goswamy, J

Bench : Division Bench

Advocate : M. Mudgal, Arjun Bhandari, R.M. Bagai and M.K. Gupta, for the Appellant;

Judgement

Prakash Narain, C.J.

(1) The petitioner. Dr. N.S. Jain, approaches this Court for the second time in connection with and in regard to his submission that he be ordered to be prematurely released from jail where he is undergoing sentence of life imprisonment on conviction by the Sessions Judge under Sections 302/120B/34, Indian Penal Code, which sentence was upheld by the High Court and, in a way, confirmed by the Supreme Court when it dismissed the SLP of the petitioner against the judgment of the High Court. The petitioner, including the period of detention as an under trial while being prosecuted for the above offences, has by now been confined for almost 16 years.

(2) Originally the petitioner had approached this Court with a complaint that his case was not being considered for premature release as postulated by Section 432 of the Code of Criminal Procedure read with para 516-B of the relevant jail manual. In that case this Court had directed that Delhi Administration to expeditiously consider the petitioner's case. In consequence of that direction, the Sentence Revising Board of the Delhi Administration met on 3rd June, 1985 and opined that it did not recommend the premature release of the petitioner. Aggrieved by this order, the petitioner has approached this Court again by the

present petition.

(3) Rule nisi was issued by us on July 11, 1985. By way of return, the respondents have filed an affidavit sworn by Shri A.S. Khullar, Deputy Secretary (Home), Delhi Administration. Shri Khullar has deposed that the petitioner's case was fully considered by the Sentence Revising Board but the Board did not recommend the premature release of the petitioner. The Administrator of the Union Territory has concurred with it and confirmed the opinion of the Board. Along with the affidavit, a copy of an extract of the minutes of the meeting of the Sentence Revising Board held on 3rd June, 1985 is attached as annexure "A".

(4) We directed the respondent to produce the relevant record before us and Mr. R.M. Bagai, learned counsel for the respondent has very fairly placed the entire record before us.

(5) On a perusal of the record we find that the copy of the minutes attached to the affidavit of Shri Khullar is not a copy of the full minutes. We have had the benefit of reading the original minutes, as the record is before us.

(6) The Sentence Revising Board did not consider the case of the petitioner alone. It was considered along with the cases of Smt. Chandresh Sharma, Rakesh Kaushik and Bhagirath.

(7) The parameters of consideration by the Sentence Revising Board are set out by it right in the beginning of the report on the first page. The Board has set itself to consider seven aspects in revising the sentence in respect of various persons. Coming to the consideration of the four persons including the petitioner, the Board has very fairly stated that it has considered the cases of the said four convicts together as, in its opinion, all the said four convicts were tried together by the Sessions Judge for the offences with which they were charged. After setting out the facts of the case and noting the fact of conviction and quantum of sentence by the Sessions Judge as confirmed by the High Court and reproducing the observations of the Supreme Court in the SLP filed by the petitioner and also after noticing that the co-convicts Ujagar Singh and Kartar Singh had been executed on October 9, 1983 the Board observed as a finding as under :

"The Board took into consideration the nature and gravity of offence, committed by the convicts, circumstances which led to the commission of offence, the age of the convicts at the time of commission of the offence, the reports from the various agencies such as authorities of Jail, the probation Officer and the authorities of the Police department and after taking into consideration of the above mentioned factors, the general consensus was that viewing the totality of the circumstances, the convicts named above, do not deserve the concession of premature release at this stage and they require some more reformatory and correctional process."

(8) Thereafter the Board gave its view that premature release is not recommended.

(9) As far as the petitioner is concerned, the report of the Probation Officer, the Jail authorities and the police are unanimous in recommending the premature release. No reservation whatsoever is found in the report of either of the three authorities in making their respective recommendations. With regard to Chandresh Sharma the said authorities have also recommended premature release, but the jail authorities make a note that about two years earlier she had committed the misdemeanour of attacking the matron in jail. As far as Rakesh Kaushik is concerned, the police reports collected by the Probation Officer are against his premature release. The Probation Officer however, does not recommend premature release but if we may use the terms with tongue in the cheek. In case of Bhagirath, the Probation Officer makes no recommendation at all.

(10) In our opinion the Sentence Revising Board misconducted the proceedings in considering the cases of the four convicts together. Each case had to be considered on its own merits. The danger in considering cases together is that the alleged earlier conspiracy between co-convicts may continue to influence the mind of the Sentence Revising Board. This is the first defect in the impugned proceedings.

(11) The other defect we find in the proceedings is that no reasons whatsoever are to be found in the minutes as to why the unanimous reports, without reservation, of the three authorities concerned have been rejected in the case of the petitioner.

(12) The Sentence Revising Board is not required to give detailed reasons being, an administrative authority. But as administrative orders are subject to the judicial review, some indication must be available in the impugned order which would go to show that the order is not arbitrary and that there has been full application of mind to the relevant circumstances. Merely repeating the phrase that all factors have been considered, cannot be regarded as sufficient. Having set out the parameters within which the consideration was to be made, it was obligatory on the Sentence Revising Board to have discussed each of those aspects, even very briefly, in respect of the petitioner. The Board has failed to do so. Therefore, the consideration by the Board gets vitiated and it does not amount to sufficient compliance with our earlier directions. There is yet another important aspect which we find the Board has not considered though sufficient material was available on the record. That aspect is with regard to the health condition and age of the petitioner. Reference may be made in this context to the averment in paragraph 4 of the petition and annexure "C" to the petition. The averments made by the petitioner in paragraph 4 are not disputed by the respondent.

(13) The learned counsel for the respondent strenuously urged that the only right that the petitioner can claim is a consideration of his case by the appropriate authority. The consideration has been done. The learned counsel submits that it is not for this Court to sit in judgment over the decision of the

Sentence Revising Board. He further contends that once the consideration is complete and has been done by appropriate authority, viz. a Board comprising of highly placed officers of the Government, no further relief can be claimed. Perhaps in days of Yore this argument would have succeeded. To-day the law regarding judicial review of administrative action is entirely different. Article 14 of the Constitution stones the Administration in its face. Article 21 does not get abrogated even for a convict. Indeed unless the State shows that its action is based upon cogent material, the action has to be struck down. No material has been shown to us other than what is mentioned in the minutes of the Sentencing Revising Board. Conviction and sentences is, of course, there. The gravity of the offence result in it. The petitioner has been in jail for almost 16 years. He is entitled, in law, to have his case considered as postulated by Section 432 of the Code of Criminal Procedure. The consideration has been done which shows that he is entitled to the consideration of his case. We however, in the present case have no hesitation in saying that the consideration has not been a valid consideration in law.

(14) Mr. Mukul Mudgal, learned counsel, for the petitioner, has invited our attention to the decision of the Supreme Court in *Shri Niwas and Others Vs. Delhi Administration and Others*, . In paragraph 4 of the report, their lordships were dealing with the case of one Shri Niwas who had undergone imprisonment for 14 years, three months and 28 days inclusive of remissions. They have, in that view of the matter observed that his case for premature release had become ripe for consideration. The Delhi Administration had not considered his case for premature release, despite the favorable report qua him from the police, the Probation Officer and the Jail Superintendent. Their lordships held that these three reports being in favor of Shri Niwas and no Explanation having been given by the Administration as to why his case was not considered, his release had to be ordered. Of course, their lordships gave leave to the Administration that if at a subsequent stage the Sentence Revising Board comes to a contrary conclusion, it may be open to the authorities concerned to move that Court for appropriate orders. In this very case in paragraph 3 of the report their lordships while dealing with the cases of Jaswant Singh and Raghunath Singh directed consideration of the cases within one month giving liberty to the two convicts to challenge the decision of the Sentence Revising Board by appropriate proceedings, i.e. making a motion for judicial review of the opinion of the Sentence Revising Board.

(15) In our view the rule enunciated in the case relied upon by Mr. Mudgal is fully attracted to the facts of the present case. No doubt in that case release orders were passed even before the consideration by the Sentence Revising Board but in this case the observations are relevant because we find the opinion of the Sentence Revising Board to be one not based on relevant considerations and vitiated by joint consideration of four cases together.

(16) Mr. Bagai relied on paragraph 8 of the judgment above referred to. How he gets any help from it, we do not understand. What either lordships have said in

paragraph 8 while dealing with the cases of two convicts, Hari Pad Nath and Chandresh Sharma is that they would not like to interfere as the reasons given by the Sentence Revising Board were found by the Supreme Court to be such as are not invalid or irrelevant. Therefore in that case on a perusal of the report from the minutes of the Board, the Supreme Court came to the conclusion the reasons given were relevant for not recommending premature release. In the present case. we have found no reasons at all as to why premature release has not been agreed to.

(17) In this view of the matter, we accept the petition and direct the release of the petitioner from jail.