

**Narinder Nath Ukhal Vs. State**

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**Court :** Delhi

**Decided On :** Apr-20-1988

**Reported in :** 35(1988)DLT56

**Judge :** Charanjit Talwar and; M.K. Chawla, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 433

**Appeal No. :** Criminal Writ Appeal No. 72 of 1988

**Appellant :** Narinder Nath Ukhal

**Respondent :** State

**Advocate for Pet/Ap. :** T.S. Sodhi, Adv

**Judgement :**

**Charanjit Talwar, J.**

(1) Narinder Nath Ukhal, the petitioner herein who is undergoing imprisonment for life for having committed the offence under Section 302 of the Indian Penal Code, seeks directions to the State for his premature release as according to him he has already undergone over 14 years rigorous imprisonment, including the period of remissions. His case is that his premature release was recommended by the Jail Superintendent and hence he was entitled to be prematurely released within the ambit of paragraph 516-B of the Punjab Jail Manual.

(2) The admitted position is that the provision of Section 433-A of the Code of Criminal Procedure is not applicable to the present case as the petitioner was sentenced to imprisonment for life on 20th February, 1978, i.e., prior to the enforcement of that Section on 18th December, 1978. In the counter-affidavit it is further admitted that the petitioner has undergone a total period of 14 years and 16 days of sentence, including the undertrial period and the period of remissions. Calculating the imprisonment for life to be 20 years inclusive of remissions, the respondents aver that as on 30th September, 1987, the unexpired portion of the petitioner's sentence was 5 years 11 months and 14 days.

(3) The petitioner's case was recommended by the Jail Superintendent for premature release. The Sentence Revising Board in its meeting of the 16th December, 1987, however, did not accept the said recommendations and relying on the report of the Probation Officer observed that it was not a fit case for premature release. The extract of the minutes of the said meeting relating to the petitioner's case has been annexed with the counter-affidavit of Shri V.K S. Chauhan, Superintendent Central Jail No. 2, Tihar. It reads :

'18.Narender Nath S/o Gopinder'Nath The convict was admitted in the Jail on 19-3-77 and was sentenced to life imprisonment on 20-2-78 for committing a murder. The convict was 39 at the time of commission of the offence. He has undergone total sentence of 14 years and 16 days as on 30-9-87, including undertrial period and remissions. The Jail authorities have recommended the case favorably on the ground of satisfactory conduct of the convict and his mental illness. The police has strongly opposed the premature release of the convict. The Probation Officer in his detailed social investigation report, placed before the Board, has not recommended the case for premature release on the ground that the social circumstances of the convict are still not consensual for proper control of the convict, who is suffering from neurosis. His family members are reluctant to look after the convict after his release. He does not have family of his own. He had no responsibility to shoulder. The majority of the members placed more reliance on the report of the probation officer and felt that the prospect of rehabilitation after release are not there. The convict if released in such social circumstances shall become a stray-vagabond in the society. The majority of the members, therefore,

do not recommend in favor of premature release of the convict.'

(4) It is apparent that reliance was placed by the Board on the report of the Probation Officer while rejecting the case as according to that report, 'The convict if released in such social circumstances shall become a strayvagabond in the society'. The majority of the members of the Board were, therefore, not in favor of premature release.

(5) We had directed the respondents to produce for our perusal the report of the Probation Officer. We have gone through the same. In his elaborate and well written report, the Probation Officer has finely recommended that:

'ENQUIRIES reveal convict as a Kashmiri Pandit whose family/ parents settled in Delhi since long. At present he is about 50 years and has no responsibility to look after. No family ties have been observed. Elder brother has no connection with convict and other family members. Nobody in the family knows his address. Convict stated that his mother expired 4 years back, whereas according to his sister, his mother is still alive and is staying in Bombay with convict's younger brother. Convict docs not plead guilty and has been stated to be suffering from Neurosis. There appears no feeling of repentance in him. He plans to settle abroad after his release. Social circumstances at present do not appear congenial for proper control of convict. All the family members appear reluctant to look after the convict, after his release.'

(6) We had occasion to deal with the aspect of recommendations of the Probation Officer in similar cases of premature release. In Cr. Writ No. 508/87 (Rattan Kumar v. State), decided by us on March 25, 1988, after noticing the duties of the Probation Officer under the Probation of Offenders Act, 1958, we had observed:

'AT this stage the petitioners cannot be considered to be youthful offenders or adolescents. They have already completed over 14 years rigorous imprisonment including the period of remissions. They have not been in touch with the society for such a long time. We have not been told as to how a Probation Officer acting as 'Probation Officer' appointed under the said Act is empowered to oppose the cases of such like convicts for premature release, which cases were

recommended by , Jail Superintendent. It is possible for the Probation Officer to say that a probationer's rehabilitation in society is difficult or that he would not be able to assist him (the life convict) in the event of his premature release after 14 years of sentence. That eventuality would not materially change after the expiry of about four more years, i.e., the unexpired portion of the sentence and especially so in the case of a poor man. We say four years, as within the ambit of remission schemes and policy under the provisions of the Punjab Jail Manual, the maximum sentence which a life convict is to undergo is 20 years with remissions.'

We had further stated that the circumstances and the motive for the offence for which those petitioners were convicted would not change after the expiry of that period. Neither would the social environments and the conditions for rehabilitating them in the society improve.

(7) In the present case according to the Probation Officer the petitioner denies that he was involved in a murder case. He continues to be of the view that he was falsely implicated. Thus the finding that the petitioner does not appear to repent for the crime, cannot be held against him. Further as we held in similar cases the social circumstances or the facts and circumstances of this case are not likely to change within the unexpired portion of the sentence. The relations of the petitioner are not likely to welcome the petitioner in their fold because of his behavior and stubbornness after the expiry of about 4' years, i.e., the unexpired portion of sentence as of today. The strong recommendations of the Jail Superintendent in our opinion have to be given more weightage. The Probation Officer's view in the present case cannot be made a ground to over-ride those recommendations. The petitioner has to come out of the jail at some stage and simply because according to the Probation Officer, the social circumstances are not congenial, the petitioner cannot be kept in custody although his case falls squarely within the ambit of paragraph 516-B of the Punjab Jail Manual. The procedure of premature release and the guidelines laid in various remission rules and there sentences provisions as provided in the Jail Manual and also the statutory orders passed from time to time have been upheld by the Supreme Court in Maru Ram v. Union of India, : 1980 CriLJ1440 , subject, however, to the provision of Section 433-A of the Code of Criminal Procedure, which provision admittedly docs not apply in the present

case.

(8) We are of the view that the Sentence Revising Board's decision in not recommending the case of the petitioner is not based on cogent grounds. We set aside the same and accept the petition. We direct premature release of the petitioner subject, however, to his furnishing a bond in the sum of Rs. 5.000.00 with a surety in the like amount to the satisfaction of the Jail Superintendent for maintaining peace and good behavior for the next four years.

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