

**Rakesh Kaushik Vs. Delhi Administration and anr.**

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**Court :** Delhi

**Decided On :** Sep-05-1985

**Reported in :** 1986CriLJ566

**Judge :** R.N. Aggarwal and; Malik Sharief-ud-Din, JJ.

**Acts :** [Constitution of India](#) - Article 14

**Appeal No. :** Criminal Writ Petition Nos. 130 and 144 of 1985

**Appellant :** Rakesh Kaushik

**Respondent :** Delhi Administration and anr.

**Advocate for Pet/Ap. :** R.K. Jain and; T.S. Sodhi, Advs

**Judgement :**

**Malik Sharief-ud-Din, J.**

(1) By this order we are disposing of two criminal writ petition Nos. 144 of 1985 (Rakesh Kaushik V. Delhi Admn. & another) and 130 of 1985 (Bhagirath V. Delhi Admn. & another) since common question of law arises and the facts are similar in these petitions.

(2) The petitioners have approached this court for issuance of a writ under Article 226 of the [Constitution of India](#) for quashing the order dated 3rd June, 1985

passed by the Sentence Revising Board of Delhi Administration rejecting the application under section 432 Criminal Procedure Code . filed by the petitioners for premature release and directing the respondents to release the petitioners from prison.

(3) In Crl. Writ No. 144/85 filed by Rakesh Kaushik it is stated that on the date of filing of this petition he had already undergone imprisonment for 16 years, one month and twenty five days and was on parole on four occasions for a total period of 70 days. In Cri. Writ Petition No. 130(85 Bhagirath petitioner alleges that he has suffered a sentence of nearly 17 years and his release from the Jail is overdue. It is contended by both the petitioners that their continued detention in Jail violates the fundamental right guaranteed by Article 14 and Article 19(1)(d) and 21 of the [Constitution of India](#) as well as Para 516-B of the Jail Manual and the provisions of section 432 Criminal Procedure Code .

(4) The petitioners together with other accused persons were convicted and sentenced by the court of Shri K. S. Sidhu, Addl. Sessions Judge Delhi vide his judgment dated 26th July, 1975 and were awarded life imprisonment under section 302/34 Indian Penal Code in case Fir No. 957 Police Station defense Colony, New Delhi. The petitioners with other accused including one Dr. N. S. Jain were involved in a case of murder which is now commonly known as Vidhya Jain Murder case.

(5) It is not necessary for us to state all the facts mentioned by the petitioners in the petitions. Suffice is to say that the petitioners have been informed that their case for premature release was also considered with the case of other accused including Dr. N. S. Jain and was rejected by the Sentence Revising Board on 3-6-1985. The petitioners state that their case is not worse than the case of Dr. N. S. Jain who on filing a writ petition in this court was ordered to be released by the court on 22-7-1985. It has further been urged that despite favorable reports by the Jail Superintendent and the Probation Officer in the case of Rakesh Kaushik and despite favorable reports by all concerned in the case of Bhagirath the Sentence Revising Board has arbitrarily and without application of mind rejected their application, under section 432 Criminal Procedure Code . for premature release.

(6) In Crl. Writ Petition No. 144/85 filed by Rakesh Kaushik, a rule was issued on 12-8-1985 and connected writ petition No. 130/85 was directed .by an. order dated 23rd August, 1985 to be heard along with the petition of Rakesh Kaushik. In both the petitions a return was filed by Shri A. S. Khullar, Deputy Secretary (Home). Delhi Administration thereafter giving a brief -history of the case in which the petitioners were convicted and sentenced, it is said that the cases of the petitioners were placed before the Sentence Revising Board on 3-6-1985 and the Board after considering the nature and gravity of the offence and other relevant considerations has not recommended for premature release of the petitioners and has submitted the minutes to the Lt. Governor Delhi which were duly approved and the decision was communicated to the petitioners. Along with the affidavit an extract of the minutes of the meeting of the Sentence Revising Board held on 3-6-1985 was also filed as Annexure 'A.'

(7) We have heard the learned counsel for the petitioners as well as Mr. Teja Singh Sodhi for the respondents. We may point out that the Sentence Revising Board did not consider the case of the petitioners separately. It was considered together with the cases of Dr. N. S.Jain. and Smt. Chandresh Sharma. We have gone through the extract of the. meeting of the Sentence Revising Board and we find that after setting out the basic facts of the offences for which the petitioners were sentenced, and convicted and after observing that the sentence was confirmed by this court and in a way also by the Supreme Court, the Board made the following observations'

'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 to 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) In view of the facts stated above the Board does not recommend for the premature release of the petitioners. We may notice that in the counter affidavit the period of imprisonment already undergone by the petitioners has not been disputed and it is not controverted that the petitioners are eligible for consideration for premature release. It is denied that the Administration has adopted any hostile attitude against the petitioners. It is also denied that the Sentence Revising Board has dealt with the petitioners' premature release matter in arbitrary, illegal, unconstitutional or discriminatory manner.

(9) After going through the material placed before us we find that in the case of Rakesh Kaushik the Superintendent of Jail has strongly recommended his premature release and there is a favorable report also by the Probation Officer. The only authority who has objected to the premature release of Rakesh Kaushik is the Superintendent of Police, Bhawani and the reason given is that there is a party faction in the village and in case he is released prematurely there may occur any mishappening. In the case of Bhagirath the Superintendent Jail has recommended his case for premature release. Similar reports have been made by the Deputy Commissioner of Police, Crimes, Delhi and there is favorable report by the Probation Officer.

(10) In our opinion the Sentence Revising Board has not proceeded properly in the matter by considering the cases of all the convicts together. The reason is that each case has to be considered on its own merits. This to our minds clearly indicates that there has not been proper application of mind by the Board. In the case of Bhagirath we do not find any reason as to why the unreserved recommendation of the three authorities concerned has been rejected. Indeed, the Sentence Revising Board is not required to give detailed reasons but even the administrative orders are subject to judicial review. It must appear that the order is neither arbitrary nor capricious and has been passed after complete application of mind and after considering the valid reasons. It is not suffice to repeat that all factors required to be considered have been taken into consideration. The Sentence Revising Board in the case of both the petitioners has dealt with the matter perfunctorily and has failed to discuss the relevant considerations even very briefly.

(11) In the case of Rakesh Kaushik, however. Superintendent of Police, Bhawani undoubtedly had raised an objection but as is apparent from the extract of the decision of the Board it has not carried much conviction with the members of the Board. From our point of view, rightly so. All that the Superintendent of Police Bhawani has said is that there is a party faction and that in case Rakesh Kaushik is released prematurely there may occur any mishap. This objection is a very vague one in as much as it has not spelt out as to what type of party faction it is, how the petitioner Rakesh is involved in it and what type of mishap was being apprehended. After a long day Rakesh Kaushik has to be released. Moreover, in the case of convicts undergoing life imprisonment premature release is only ordered by the Government on the convict furnishing a personal bond to maintain good behavior and in case a lifer was to transgress his limits and violate any conditions and commits a crime he can again be recommended to be jailed as per rules. To us, therefore, it appears that this could not be a valid consideration for refusing to recommend the petitioner Rakesh Kaushik for premature release.

(12) It would appear 'that the case against the petitioners has no special features. Their role in the commission of the offence has not been more heinous than that of Dr. N. S. Jain and Smt. Chandresh Sharma and the Supreme Court while dismissing the Special Leave Petition of Smt, Chandresh Sharma [ Special Leave Petition (Crl.) No. 138/78] on 31st July, 1978 has observed so and we quote :

'question of law of general importance or a decision which shocks conscience of the Court are some of the prime requisites for the grant of special leave. If there is anything at all in this case which shocks our conscience, it is this that, if the death sentence was at all awarded, it should have been awarded to the hirelings and that the husband and his mistress who promised to pay to the hirelings large sums of money in order to procure the murder of the wife should have been awarded the lesser sentence. But we shall not go into that question any further, since the Sessions Court and the High Court have concurrently taken the view that the sentence of life imprisonment is enough to meet the ends of justice in so far as two latter are concerned. The Special Leave Petitions are accordingly dismissed. '

(13) We have deliberately reproduced these observations of the Supreme Court to indicate that the cases of the present petitioners are in no way worse than the case of Dr.N. S. Jain who has been prematurely released from Jail by an order of this Court dated 22nd July, 1985 in Cr. W. 129(85). The case of the petitioners to our minds is clearly covered by the aforesaid decision of this Court. We are, therefore, of the view that in the case of the petitioners, the opinion tendered by the Sentence Revising Board and approved by the Lt. Governor Delhi is not based on relevant considerations and, therefore, the opinion tendered by the Board and approval accorded by the Lt. Governor Delhi is vitiated. We as such allow the writ petitions and direct pre-mature release of the petitioners from Jail subject to rules that may be existing regarding furnishing personal bond and surety-in such matters.

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