

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl) No(s).1694/2007

(From the judgement and order dated 18/10/2006 in DBHCR No.6506/2006 of The HIGH COURT OF RAJASTHAN AT JAIPUR)

STATE OF RAJASTHAN & ANR.

Petitioner(s)

VERSUS

DINESH GAUTAM

Respondent(s)

(With appln(s) for exemption from filing O.T. and office report)  
(For final disposal)

WITH S.L.P.(C) NO.8861 of 2007  
(For final disposal)

Date: 01/10/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE SURINDER SINGH NIJJAR  
HON'BLE MR. JUSTICE J. CHELAMESWAR

For Petitioner(s)            Dr. Manish Singhvi, AAG  
   Mr. Amit Lubhaya, Adv.  
   Mr. Milind Kumar, AOR

For Respondent(s)            Mr. S.K. Sahni, Adv.  
   Mr. Pankaj Kumar Singh, Adv.  
   Mr. K.L. Janjani, AOR

UPON hearing counsel the Court made the following  
O R D E R

S.L.P. (Crl.) No.1694 of 2007, has been filed by the State of Rajasthan against one Dinesh Gautam and S.L.P. (C) No.8861 of 2007, has been filed by the State of Rajasthan against one Shiv Kumar. The Special Leave Petitions are directed against the judgments and orders both dated 18th October, 2006, passed by the Division Bench of the Jaipur Bench of the Rajasthan High Court in D.B. Habeas Corpus Petition Nos.6506 and 3252, both of 2006.

As far as S.L.P.(C) No.8861 of 2007, is concerned, the same ought to have been moved before the High Court in the criminal writ jurisdiction, but for some reason or the other, it was filed on the civil side and, accordingly, the matter has been registered before this Court also as a special leave petition on the civil side. Habeas corpus matters are matters which have to be filed on the criminal side and, accordingly, the Rajasthan High Court should take note of such fact.

Today, when the matters are taken up, learned counsel for the respondent, Shiv Kumar, in S.L.P.(C) No.8861 of 2007, is not

present. Let this matter stand over till next Monday (08.10.2012) and be listed 'for orders' at the top of the list.

As far as S.L.P. (Crl.) No.1694 of 2007, is concerned, the Rules filed by the State of Rajasthan, being The Rajasthan Prisons (Shortening of Sentences) Rules, 1958, have been followed and the respondent's case was sent to the Advisory Board for necessary scrutiny. The Advisory Board has in its report dated 26th April, 2006, recommended that in view of the good conduct of Dinesh Gautam during his prison sentence, he could be considered for premature release, upon furnishing a bail bond and surety. Despite the said recommendation of the Advisory Board, the District Magistrate, Ajmer, by his order dated 7th July, 2006, addressed to the Secretary of the Advisory Board and the Superintendent of Central Jail at Ajmer, stated that from the Report of the Superintendent of Police, Ajmer, it could not be stated that there was no danger to the life of the convict by persons belonging to the victim's side and, accordingly, he had recommended not to release the convict prematurely.

Having regard to the opinion expressed by the District Magistrate, Ajmer, the Deputy Secretary (Home), Government of Rajasthan, also disagreed with the recommendation of the Advisory Board and the State Government had, therefore, decided not to release the convict prematurely.

Reference has been made to Rule 12 of the aforesaid Rules and holding that the same was mandatory, the High Court has set aside the order of the State on the ground that Rule 12 of the 1958 Rules had not been followed. It is against the said order of the Division Bench of the High Court that the State of Rajasthan has come up by way of this special leave petition.

If one were to look at the Report of the Superintendent of Police, Ajmer, on the basis of which the recommendation was made by the District Magistrate, and, thereafter, the Deputy Secretary (Home), it would be seen from paragraph 4 of the Report, that the Superintendent of Police had, in fact, come to a finding that despite the fact that the respondent had been released on parole on several occasions, no indication had been found as to any danger to the life of the respondent in the investigation that had been conducted till then. In spite of such finding in paragraph 4 of the Report, the Superintendent of Police went on in the penultimate paragraph to observe the fact that in the event of premature release, the respondent's life would be in danger, could not be excluded.

Obviously, the matter has not been considered properly by the Superintendent of Police, Ajmer, and has been dealt with mechanically, thereafter, both by the District Magistrate, Ajmer and the Deputy Secretary (Home), Government of Rajasthan.

In such circumstances, we dismiss the special leave petition and direct that the order of the High Court be given effect to forthwith. Before we part with the matter, it may be brought to the notice of the State of Rajasthan that Rule 11 of the 1958 Rules set out the conditions for release. The said Rule provides that the Advisory Board may recommend release of a prisoner conditionally or unconditionally whenever a prisoner is to be released prematurely. Stringent conditions should be imposed on a prisoner recommended to be released conditionally and he should be made to enter into a Bond in Form 2 annexed to the Appendix to these Rules. The Bond required to be given is in the nature of a Personal Bond and, accordingly,

the Advisory Board while making recommendations in future, should not direct grant of bail. Release is to be made in accordance with Rule 3 and upon the signing of a Bond in the Form, as indicated in the said Rules.

|(Chetan Kumar)  
|Court Master

| |(Juginder Kaur)  
|Assistant Registrar

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