

**11.06.2021**  
**Sl. No.3**  
**(PP)**

IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION  
APPELLATE SIDE  
(Via Video Conference)

**WPA 2132 of 2021**  
**with**  
**CAN 1 of 2021**

**Ashabuddin alias Soukat**  
**Vs.**  
**The State of West Bengal & Ors.**

Mr. Giasul Islam

....for the petitioner.

Mr. Amitesh Banerjee, Sr. Standing Counsel

....for the State.

The petitioner is serving a sentence on being convicted by the Additional Sessions Judge, 2<sup>nd</sup> Court, Alipore in Sessions Trial No.1(6)05 corresponding to Sessions Case No.65(1) of 2003. The judgment was delivered on 20<sup>th</sup> May, 2009. The petitioner says to have been arrested on 3<sup>rd</sup> November, 2001. The petitioner had preferred an appeal against the said judgment and order before this Court, being CRA 624 of 2009. The judgment of the Sessions Court, being the subject matter of the said appeal, had been confirmed by this Court by a judgment and order dated 14<sup>th</sup> November, 2014. The petitioner is presently serving his sentence at Central Jail No.8/9, Tihar, New Delhi. The petitioner had applied for parole of 90 days on 22<sup>nd</sup> June, 2020. The petitioner says that by a memo bearing no.392/ADG-

IG/2020 dated 17<sup>th</sup> August, 2020, the ADG & IG of Correctional Services, Government of West Bengal informed the petitioner that his prayer for release on parole can be considered by the Correctional Home/ State in which the petitioner is presently serving his sentence.

Being aggrieved by such communication, the petitioner had filed the instant writ petition inter alia praying for a release on parole. The petitioner in support of his prayer for release on parole has referred to several judgments in the writ petition itself. The judgments so referred to are as follows:

- I. Asfaq Vs. The State of Rajasthan on 11<sup>th</sup> September, 2017 in Civil Appeal No. 10464 of 2017,
- II. Hari Krishna Mandir Trust versus State of Maharashtra & Others in Civil Appeal No.6156 of 2013,
- III. Inder Singh v. State, (1978) 4 SCC 161
- IV. Devi v. State of Delhi, 1996 (36) DRJ 545
- V. Francis Coralie Mullin V. The Administrator, Union Territory of Delhi & Ors. [1981] INSC 12; AIR 1981 SC 746
- VI. Sunil Batra V. Delhi Administrator & Ors. [1978] INSC 148; AIR 1978 SC 1675
- VII. Sunil Batra V. Delhi Administrator [1979] INSC 269; AIR 1980 SC 1579
- VIII. State of Madhya Pradesh V. Ratan Singh & Ors. [1976] INSC 139; AIR 1976 SC 1552
- IX. Govt. of A. P. & Ors. Vs. M.T. Khan [2003] INSC 613 (5 December, 2003)

X. Hanumant Dass V. Vinay Kumar & Ors.  
[1982] INSC 44; AIR 1982 SC 1052

The petitioner says that in view of the ratio laid down in the judgments referred to hereinabove, the petitioner is entitled to be released on parole.

On behalf of the State, it is submitted that after issuance of the memo dated 17<sup>th</sup> August, 2020, on receiving a communication from Tihar Jail authorities, the decision taken by the ADG & IG of Correctional Services, West Bengal and reflected in the said memo dated 17<sup>th</sup> August, 2020, was revisited to ascertain the correct legal position. On doing so, it was found that the authorities in the State of West Bengal, wherein the petitioner was sentenced, is the appropriate authority to consider the petitioner's prayer for release on parole. The authority concerned, therefor, in order to consider the petitioner's prayer for release on parole on merits invited report from Tihar Jail authorities as the petitioner's past conduct is one of the main parameters as indicated in the judgment reported in Asfaq (*supra*).

After receiving such report from Tihar Jail authorities and considering the past conduct of the petitioner, the ADG & IG of Correctional Services, West Bengal by a order dated 8<sup>th</sup> April, 2021 has rejected the petitioner's prayer for release on parole.

This order was communicated to the petitioner by a letter dated 19<sup>th</sup> April, 2021 served by the Tihar Jail Authorities. The confirmation of service has been also communicated by the letter dated 26<sup>th</sup> April, 2021. All these documents have been made over to Court (photocopies) are taken on record.

In this factual background today the issue involved in the instant writ petition does not survive in view of the rejection of the petitioner's prayer for release on parole having been considered and rejected on merits. The petitioner has to, therefor, challenge the order of rejection of the petitioner's prayer for release on parole passed on 8<sup>th</sup> April, 2021. The challenge to the rejection of petitioner's prayer for release on parole is not the subject matter of the writ petition.

In view of the subsequent developments in the matter, the prayer made by the petitioner cannot be considered on the basis of the averments made in the writ petition. Even if the petitioner is allowed to file a supplementary affidavit bringing on record the rejection of the petitioner's prayer for release on parole which has been admittedly received by the petitioner, the writ petition cannot be cured.

The writ petition, therefor, is dismissed in view of the subsequent developments in the matter with a liberty to the petitioner to challenge the rejection

order by which the prayer for release of the petitioner on parole has been turned down taking all grounds available to him including those in this petition which are relevant.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, the allegations made in the writ petition are deemed to have not been admitted by the respondents.

Since the main writ petition is dismissed, the connected application, being CAN 1 of 2021, automatically stands dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance with the necessary formalities.

**(Arindam Mukherjee, J.)**