

**In the High Court at Calcutta  
Constitutional Writ Jurisdiction  
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya**

**WPA No. 3571 of 2020**

**Sri Gopal Sarkar**

**Vs.**

**The State of West Bengal and others**

For the petitioner : Mr. Sudipto Maitra,  
Mr. Manojit Bhattacharyya,  
Mr. Daipayan Biswas

For the State : Mr. Subhabrata Datta,  
Mr. Benazir Ahmed,  
Mr. Debashis Sarkar

Hearing concluded on : 11.02.2021

Judgment on : 19.02.2021

**Sabyasachi Bhattacharyya, J:-**

1. The petitioner was convicted to life imprisonment for offences under Sections 366/384/302/201 of the Indian Penal Code by the Judgment and Order dated December 14, 1991 of the Sessions Judge, Third Bench, City Sessions Court, Calcutta. Thereafter, the petitioner preferred an appeal against such judgment and was released from the Alipore Central Correctional Home on February 28, 1998, pursuant to an order passed by this court. On September 10, 2006, the petitioner was again sent to the Presidency Correctional Home and re-committed on November 6, 2006. Thereafter, the petitioner was committed to the Dum Dum Central

Correctional Home on May 29, 2008. The appeal of the petitioner was ultimately dismissed and the conviction affirmed.

2. After incarceration of over 14 years, the petitioner filed a criminal revision, bearing C.R.R. No. 1545 of 2012, wherein the then Superintendent of the Dum Dum Central Correctional Home affirmed an affidavit and intimated the court that a proposal had been sent to the Review Committee on June 28, 2012, through the IG Correctional Services for premature release of the petitioner, who had undergone actual imprisonment for more than 14 years.
3. The revisional application was disposed of on August 16, 2012, upon a co-ordinate Bench observing that such disposal was in terms of the statement made by counsel for the State that the petitioner's case shall be taken up by the Review Committee on its next meeting and the decision would be conveyed to the petitioner. Liberty was given to the petitioner to challenge the order of the Review Committee.
4. No decision was subsequently communicated to the petitioner, prompting the petitioner to file a writ petition, bearing W.P. No. 4036 (W) of 2013. The said writ petition was disposed of by another co-ordinate Bench on February 27, 2013 with the observation that the petitioner's prayer for premature release shall be placed before the Review Committee in its next meeting. The Review Committee was to proceed to

consider the petitioner's application in accordance with law and pass an appropriate order. In the event the petitioner's prayer was rejected, a reasoned order was to be passed. If the prayer was accepted, necessary follow-up steps were to be taken without delay, also in accordance with law.

5. Subsequently, on April 30, 2014, one Kamal Sarkar, the brother of the petitioner, gave a representation to the Chairman of the Review Committee, State of West Bengal to the effect that the petitioner had already served more than 17 years in correctional homes as a life convict. A request was made therein to take a decision regarding release of the petitioner on humanitarian ground. No such decision, however, was communicated to the petitioner or his brother, prompting the petitioner to file the present writ petition, seeking a direction on the respondents to take adequate steps for arriving at a decision regarding the premature release of the petitioner.
6. At the time of hearing, learned counsel for the State hands up the minutes of the proceedings of the 64<sup>th</sup> meeting of the State Sentence Review Board, West Bengal for consideration of premature release of life convicts. Such meeting was held on February 3, 2020. It transpires from such minutes that the request of premature release made by the petitioner was not recommended by the Committee on the ground that

the petitioner was guilty of a group act, had potential to organize gang and that reverting to crime could not be ruled out, based on the objection given by the police authorities.

7. Learned counsel for the petitioner argues that one Bijon Barua, who was also a prime accused in the same offence and was also convicted to life imprisonment, has already been released prematurely. It is thus argued that the petitioner suffered from a patent discrimination, violative of Article 14 of the Constitution of India. It is further submitted by counsel for the petitioner that the considerations, on which the petitioner's prayer for premature release was rejected, were irrelevant in the context. Such refusal was based solely on the report given by the police authorities and did not take into consideration the petitioner's conduct during the period of custody, which could only be intimated by the jail authorities, whose views were not reflected in the minutes at all.
8. That apart, the Review Committee contravened the specific direction of the co-ordinate Bench, dated February 27, 2013, in W.P. No. 4036(W) of 2013 that, if the petitioner's prayer is rejected, a reasoned order was to be passed. In the present case, no reasoned order was passed. It is submitted that the petitioner is already in actual incarceration for about 24 years and has attained an age of 53 years. It is, thus, irrelevant as to

the nature of crime committed by the petitioner more than two decades ago, for the purpose of premature release.

9. It is further argued that the role of the petitioner in the offence-in-question was minor, which justifies the premature release of the petitioner all the more. Learned counsel places reliance on Section 433A of the Code of Criminal Procedure and submits that a convict is entitled to premature release in case of incarceration for more than 14 years, which period has been exceeded by a decade in the case of the petitioner.
10. Learned counsel also refers to the West Bengal Correctional Services Act, 1992, with specific reference to Sections 58 and 61(4) of the said Act and submits that the yardsticks mentioned therein were not applied in the petitioner's case.
11. Rule 591(29) of the West Bengal Jail Code stipulates that only the conduct of the convict in prison for the three years immediately preceding the completion of 20 years in prison is to be considered for the purpose of premature release. It is argued that there was no reflection of such consideration in the minutes of the meeting held by the Review Committee.
12. Learned counsel for the petitioner places reliance on *Zahid Hussein and others vs. State of W.B. and another*, reported at 2001 SCC (Cri) 631, in

support of the proposition that the conduct of the convict while in jail is an important factor to be considered to ascertain whether they have lost their potentiality in committing crime due to long period of detention. In the said case it was held that the views of the witnesses who were examined during trial and the people of the locality cannot determine whether the petitioners would be a danger to the locality if released prematurely. This has to be considered keeping in view the conduct of the petitioners during the period when they were undergoing sentence. It was observed that age alone cannot be a factor while considering whether the petitioner still has the potentiality of committing crime or not as it will depend on changes in mental attitude during incarceration.

13. Learned counsel next relies on *Laxman Naskar vs. Union of India and others*, reported at (2000) 2 SCC 595. In the said case, though the police report did not cover all the points as per the guidelines framed by the Government, the prayer of life convicts for premature release was rejected mainly on the ground of objection by the police. The police had only reported the chances of the petitioner committing crime again. The Government did not consider the prayer for premature release as per the Rules and did not pay sufficient attention to the conduct record of the petitioners while in jail, nor did it consider whether they had lost their potentiality in committing crime. It was held by the Supreme Court that

the relevant aspect, namely, that there is no fruitful purpose in confining the convict any more, was also not considered, nor was the socio-economic condition of the convict's family taken into account. Thus, the Supreme Court set aside the orders of rejection of premature release of the State Government and directed the Government to reconsider the matter.

14. It is, thus, argued that the petitioner ought to be prematurely released immediately upon a proper consideration of the relevant factors by the Review Committee.
15. Learned counsel appearing for the State-respondent contends that the procedure/guidelines on premature release of prisoners framed by the National Human Rights Commission, a copy of which is handed up to court, contemplates the eligibility for premature release under the provision of Section 433A of the Code of Criminal Procedure. It is stipulated therein that a consideration of the circumstances in which the crime was committed was one of the relevant factors to be considered, apart from whether the convict has lost his potential for committing crime considering his overall conduct in jail during the 14 years' incarceration, the possibility of re-claiming the convict as a useful member of the society and the socio-economic condition of the convict's family. The Commission was also of the view that the total period of

incarceration including remissions should ordinarily not exceed 20 years. Certain illustrative cases of crimes were also mentioned therein.

16. It is submitted that the minutes of the relevant meeting of the Review Board sufficiently indicate the considerations which were taken into account for the purpose of assessing the requests of premature release. It is argued that the input by the police authorities is also one of the relevant factors as per the law and the judgments governing the field. Moreover, the Notification dated January 24, 2000, published in pursuance of the recommendations of the National Human Rights Commission, for constituting a Review Board in order to review the cases of life convicts detained in different jails, specified the Home Secretary, Judicial Secretary, IG of prisons, West Bengal, Secretary, Home (Jails), DG and IG of Police, West Bengal, Commissioner of Police, Calcutta and the Chief Probation Officer as members of the Board. The Review Board was to review cases of life convicts who have completed actual imprisonment of 14 years and more and whose premature release has not been recommended by the SP and District Magistrate for the Districts and Commissioner of Police, Calcutta, as the case may be. Cases including those pending with negative reports would be submitted before the Review Board within 15 days from the date of receipt of the negative reports. It is argued that the composition of the Committee itself

indicates that the Commissioner of Police, DG and IG of Police and Home Secretary were members thereof. Moreover, the recommendations of SP, District Magistrate and Commissioner of Police were also mentioned therein. This justifies, according to learned counsel for the State, the relevance of the inputs from the police authorities with regard to premature release.

17. Learned counsel for the State cites the judgment of *State of Haryana and others vs. Jagdish*, reported at (2010) 4 SCC 216. In the said case, the Supreme Court held that the right of the convict is limited to the extent that his case be considered in accordance with the relevant Rules, etc., but he cannot claim premature release as a matter of right.
18. The Supreme Court further held that at the time of considering the case of premature release of a life convict, the authority may be required to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large, whether there was any chance of future recurrence of committing a crime, whether the convict had lost his potentiality in committing the crime, whether there was any fruitful purpose of confining a convict anymore and the socio-economic condition of the convict's family and other similar circumstances. The Supreme Court went on further to observe that consideration of public policy and humanitarian impulses

supports the concept of executive power of clemency. If clemency power is exercised and sentence is remitted, it does not erase the fact that an individual was convicted of a crime. It merely gives an opportunity to the convict to re-integrate into the society.

19. It is, thus, argued that the potentiality of the convict to commit a fresh crime and the nature of the crime for which he was convicted, apart from the scope of re-integrating the convict into the society, are the relevant factors, which were taken into consideration by the Review Committee in the present case.
20. Learned counsel then cites *State of Punjab vs. Gurmej Singh*, reported at (2002) 6 SCC 663, where the Supreme Court held, inter alia, that premature release is considered on the material facts and circumstances prevailing at the relevant time of release. Report of the officers concerned is also called for and it is after consideration of all the materials that necessary decision is taken in the matter.
21. Such observation also justifies, according to learned counsel for the State, inputs being taken from the police authorities.
22. Learned counsel next cites *Rajan vs. Home Secretary, Home Department of Tamil Nadu and others* [(2019) 14 SCC 114], in support of the proposition that grant or non-grant of remission is a prerogative to be

exercised by the competent authority and it is not for the court to supplant that procedure. Indeed, it was held in the report, grant of premature release is not a matter of privilege but is the power coupled with duty conferred on the appropriate Government in terms of Sections 432 and 433 of the Criminal Procedure Code, to be exercised by the competent authority after taking into account all the relevant factors, such as it would not undermine the nature of crime committed and the impact of the remission that may be the concern of the society as well as of the State Government.

- 23.** In case of the present petitioner, it is submitted, none of the tests for premature release were satisfied, as reflected from the minutes-in-question. Bijon Barua, who was the other co-accused granted remission, got such remission on intelligible differentia. The report of the authorities in case of Bijon Barua indicated sufficiently that his overall conduct and behaviour during his stay in police custody suggested that he committed the crime in bad companionship and thereon he intended to lead a good and honest life onwards. He also enumerated the fact that he felt guilty for the crime that he committed. He participated in the crime for quick money at a young age, when he could not have earned his livelihood legitimately and also expressed the wish that, if released, he would spend his life as a complete family man and would earn his livelihood on private

tuition and would live honestly the rest of his life. His wife had divorced him long ago and his only daughter had got married. The daughter and uncle came to meet him after one or two months. It was further reflected that he was leading a tragic life with spiritual thoughts and that Bijon Barua seemed to have lost mental strength and intention to repeat the crime for which he was behind the bars.

**24.** Learned counsel relies on a Memo bearing No. Jt. CP(Crime)/CI/99/17 dated May 8, 2017 issued by the Joint Commissioner of Police (Crime), Kolkata to the Commissioner of Police, Kolkata in such regard.

**25.** Learned counsel also relies on Memo No. 044(5)/DG-IG/20, Jt. C.P Crime/SO 203 dated January 27, 2020 which reflects the brief facts of the crimes and comments with reasons on the proposal of premature release of the petitioner. The reasons given for the refusal to grant premature release were:

- (i) Heinous and group act,
- (ii) May retaliate upon the witnesses,
- (iii) Has age and potential to arrange a group/gang to commit such crimes,
- (iv) He is divorcee; only his brother Kamal Sarkar visits him now and then, and

- (v) He has no specific skill to earn his livelihood; hence, reverting to crime is highly probable. The police opposed the petitioner's release on such grounds strongly.

- 26. It is further submitted that the petitioner was found guilty of the offence of murder under Section 302, read with Section 34 of the Indian Penal Code, as well as criminal conspiracy under Section 120B of the Code. He was further found guilty of the offence of causing disappearance of evidence of the murder as contemplated in Section 201, read with Section 34, of the Indian Penal Code and was convicted on all such counts. Hence, it is submitted, the rejection of the petitioner's request for premature release was fully justified by cogent reasons.
- 27. A consideration of Section 433A of the Code of Criminal Procedure read with Sections 58 and 61(4) of the West Bengal Correctional Services Act, 1992 indicate that a convict who is behind the bars for more than 14 years can be released prematurely under certain considerations. Rule 591(29) of the West Bengal Jail Code stipulates the convicts' conduct for the last 3 years prior to completion of 20 years of incarceration as a ground of consideration for such release.
- 28. Sections 54 and 57 of the Indian Penal Code speak of punishment being commuted.

29. A conjoint reading of the said provisions, however, merely casts a liability on the authorities concerned to consider the case of premature release under certain criteria. Those criteria have been sufficiently elaborated in the guidelines issued by the Human Rights Commission, as circumscribed by the several judgments of the Supreme Court holding the field.
30. Clause 3.1 of the procedure/guidelines dated September 26, 2003, issued by the National Human Rights Commission deals with the eligibility of convicts for such premature release. The circumstances in which the crime was committed, the potential of the convict to commit such crime again, considering his overall conduct in jail, possibility of reclaiming the convict as a useful member of the society and socio-economic conditions of the convict's family are relevant considerations stipulated therein.
31. In the present case, the minutes of the 64<sup>th</sup> meeting of the State Sentence Review Board held on February 3, 2020, coupled with the Memo dated January 27, 2020 referred to above, sufficiently indicate the yardsticks on which the requests for premature release of convicts, including the petitioner, were considered.
32. Clause 2 of the minutes stipulates the consideration, which includes individual reports from Police Authorities, Correctional Home Authorities

and Probation-cum-After Care Authorities, the tenure of imprisonment served by the life convicts, physical and mental condition, age, conduct during incarceration, potentiality of committing crime in future, social acceptance and chances of rehabilitation etc., of the life convicts. Gravity of the offence and public sensitivity involved with the crime were also part of the enumerated considerations. Thus, it is evident that all the relevant yardsticks were applied by the Authorities while coming to the decision regarding premature release of the convicts under consideration. In fact, in case of 33 life convicts, the Committee recommended premature release, on the considerations as stipulated in the minutes. Six convicts were relegated to a further review meeting on the grounds stated therein. 116 life convicts were refused the prayer for premature release, including the present petitioner.

33. The short mention of the reasons in the third column of such minutes mentioned group act, potential to organize gang and reverting to crime, which could not be ruled out by the police authorities. That apart, Memo No. 044(5)/DG-IG/20 of the Joint Commissioner of Police, Crime dated January 27, 2020, issued prior to filing of the present writ petition, provided further reasons for such refusal in case of the petitioner. The scope of retaliation upon witnesses, the nature of the offence, being a heinous and group act, and the age and potential of the petitioner to

arrange a group/gang to commit such crimes were considered. The social situation of the petitioner and his chances of being reinstated were also adverted to. The petitioner, it was recorded, has no specific skill to earn his livelihood, thereby increasing the chances of reverting to crime.

**34.** As such, all the parameters as stipulated in the judgments cited before this court were taken into consideration.

**35.** The procedure/guidelines on premature release of prisoners issued by the National Human Rights Commission on September 26, 2003 were specifically considered and adverted to, as reflected from the minutes of the relevant Review Committee meeting and the other documents in that regard placed by the State-respondent. As far as the violation of Article 14 is concerned, the petitioner does not have a fundamental or statutory right to premature release. Undoubtedly, the petitioner has a right of being considered for such premature release after a particular period of incarceration, which right was exhausted by the petitioner upon a consideration being given in that regard by the Review Committee. There cannot be any invocation of Article 14 of the Constitution of India in terms, since there were sufficient intelligible differentia existing in the release of a co-accused, namely, Bijon Barua and the refusal of such release to the petitioner. As far as the age and conduct in prison is concerned, as well as the chance of rehabilitation in society and loss of

potential to commit a similar crime in future are concerned, Bijon Barua was way ahead, as per the inputs in the reports by the authorities, than the petitioner. A perusal of the minutes itself shows that sufficient consideration was given to all the convicts for premature release. The Review Committee gave adequate reasons for the refusal of the petitioner's prayer for premature release, which are in consonance with the tests laid down in the cited reports.

- 36.** As such, the decision-making process of the Review Committee in refusing premature release to the petitioner cannot be faulted. Police reports are one of the components of the considerations which are relevant for grant of premature release, along with other yardsticks. All the parameters, as settled by the decisions of the Supreme Court and the relevant guidelines of the National Human Rights Commission, were satisfied in the present case. Hence, no fault can be found with the decision-making process and/or the exercise of discretion by the Review Board.
- 37.** In the circumstances, the decision rejecting the petitioner's request for premature release was justified and cannot be interfered with.
- 38.** Accordingly, WPA No.3571 of 2020 is dismissed without any order as to costs.

- 39.** However, the petitioner will be at liberty to apply afresh for premature release before the next Review Committee meeting. If such an application is made by the petitioner, the Review Committee shall decide afresh on the same in its next meeting in accordance with law and procedure, without being influenced in any manner by any of the observations made in this judgment.
- 40.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

**( Sabyasachi Bhattacharyya, J. )**