

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

Criminal Writ Petition No.6/2020

Sakhawat Hussain Abdul Sattar,
Convict Prisoner No.825, Central Prison, Amravati. ...Petitioner

VERSUS

1. The State of Maharashtra,
 through the Additional Secretary,
 Ministry of Home Department
 having its office at Mantralaya, Mumbai-400032.

2. The Superintendent, Central Prisons, Amravati. ...Respondents

Shri R.D. Dhande, Advocate for the petitioner.
Shri S.M. Ghodeswar, APP for State.

**CORAM: M.S. SONAK &
 PUSHPA V. GANEDIWALA, JJ.**
DATE : 20-10-2021.

J U D G M E N T (P C.)

Rule. The rule is made returnable forthwith. Heard finally
with the consent of both the parties.

2. The challenge in this petition is to the order dated
19-03-2019, passed by respondent no.1 whereby, the representation of
the petitioner for his premature release from jail came to be rejected.

3. The petitioner is a life convict and is presently confined in the Central Prison, Amravati bearing Criminal Convict No.825. The petitioner has been convicted by the Additional Sessions Court, Achalpur in S.T. No.29 of 1993 vide its judgment dated 04-09-1993 for the offenses under Sections 452, 376, 506-II, 354 of the Indian Penal Code (for short, 'IPC') and 25 of the Arms Act.

4. The petitioner relies on the Government Resolution dated 15-03-2010, which prescribes the parameters for premature release of prisoners serving life imprisonment. The petitioner seeks his premature release in terms of Clause 8(a) of the aforesaid GR. according to which, the persons who are convicted in rape cases have to undergo a period of imprisonment of 18 years including remission subject to a minimum of 10 years of actual imprisonment including a set off period.

5. Learned Counsel Shri Dhande appearing on behalf of the petitioner submits that the case of the petitioner for premature release was put up before the Advisory Board and the learned Members of the Advisory Board recommended the early release of the petitioner in terms of Clause 8(a) of the Government Resolution dated 15-03-2010. Learned Counsel further states that the petitioner would be completing

his sentence of 18 years including remission on 08-01-2022. He further submitted that respondent no.1 in the impugned order went entirely by the contrary recommendation dated 22-03-2010 made by the Session Court that had convicted the petitioner.

6. *Per contra*, learned A.P.P. Shri Ghodeswar appearing on behalf of the respondents pointed out from the affidavit in reply, that the petitioner while on furlough and parole leave failed to surrender in time and was required to be arrested and brought to the prison after 1185 days and 2943 days respectively. The learned A.P.P. Shri Ghodeswar further submitted that considering the nature of the crime which he has committed, the petitioner does not deserve to be prematurely released as prayed.

7. We have considered the rival submissions.

8. At the outset, in Government Resolution, dated 15-03-2010, the Government has issued revised guidelines for premature release of prisoners undergoing life sentences. These guidelines make special provisions in respect of prisoners convicted for rape under Section 376 IPC. As per Clause 8(a) of these guidelines, persons guilty of rape can be prematurely released on completion of a sentence of imprisonment of 18 years including remission. Admittedly,

the petitioner in the present case is convicted for the offense of rape and is due to complete imprisonment of 18 years including remission on 8-1-2022.

9. In this case, there is no dispute and even the record clearly bears out that the case of the Petitioner for his premature release on 8-1-2022 in terms of guideline no. 8(a) is recommended by the Advisory Board, the Jail/Police Superintendent, and the District Magistrate. Such recommendation was after taking into account, inter alia, the nature of the crime committed by the convict, his conduct in prison, his inordinate delay on two occasions in returning to the prison after he was released on parole, and other relevant factors. The learned Sessions Judge, however, opined that since the Petitioner was involved in the commission of a very serious and heinous crime of rape, the petitioner should not be released. The Learned Sessions judge relied on Clause 2(c) of the aforesaid guidelines which relates to the crime against women, committed with exceptional violence and or with brutality or death of victim due to burns.

10. Admittedly this is not a case where the Petitioner was convicted for the offense of rape coupled with the death of the rape victim. Undoubtedly, the Petitioner was convicted for a very serious

offense of rape that he committed by tying his victim in front of her husband and daughter. But then this consideration is required to be balanced with the other relevant considerations taken into account by the Advisory Committee, Jail/Police Superintendent, and the District Magistrate. Admittedly, the Petitioner, for returning late from Parole has suffered penalties and additional incarceration. The petitioner thanks to his conduct, is in and at times out of prison since the year 1992-93. The Petitioner was 27 years old when he committed the offense and is now about 51 years old. Having regard to the reformatory principles and the recommendations of the three authorities including the Advisory Board, we think that the Petitioner, in accord with Guideline 8(a) can be released after suffering actual incarceration of 18 years including remission. The Petitioner, in this case, has acted quite perversely but the opinion of the three authorities about lack of exceptional violence or brutality cannot be said to be unreasonable. Besides, it is these three authorities that have had the maximum opportunity to assess the conduct of the prisoner whilst under incarceration and therefore their opinion on the reformatory aspect also deserves some consideration. Almost all crimes for which the sentence of life imprisonment is imposed will be serious and therefore mere seriousness without anything else, cannot ordinarily be a ground to reject pleas for premature release in terms of the guidelines framed.

11. For all the above reasons, we allow this petition, set aside the impugned order dated 19-03-2019, and direct the release of the petitioner on his completing actual 18 years of imprisonment including remission i. e. on or about 8.1.2022 in accord with Guideline 8(a) framed by the Government.

12. The rule is made absolute in the above terms. No costs.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)