

26.07.2022
sayandeep
Sl. No. 05
Ct. No. 05

WPA 14583 of 2022

Kanchi @ Sanjit Makhal & Anr.
-Versus-
The State of West Bengal & Ors.

Mr. Malay Bhattacharyya
Mr. Subhrajyoti Ghosh
Ms. Sudipa Sengupta

..... for the petitioners

Mr. Debasish ghosh
Mr. D. Gomes

....for the State

The prayer of the petitioners is for release under Section 61(2) of the West Bengal Correctional Services Act, 1992. The admitted facts are that the petitioners were convicted on 20.06.2001 under Section 376(2)(g) of the Indian Penal Code. The petitioners have been in the correctional home since 2001 and hence have been lodged in the Correctional Home for the last 21 years.

Learned counsel appearing for the petitioners submits that the petitioners were granted parole during the covid-19 pandemic and are still on parole by reason of a decision of the High Powered Committee recommending the sequence of inmates returning back to the Correctional Home. Counsel places an order of the Supreme Court dated 7.07.2017 where on similar facts the Supreme Court noted that the petitioners were in the correctional home for a period of over 19 years and directed release of the petitioners under the relevant provisions of the West Bengal Correctional Services Act, 1992. Counsel also places an order of the

Supreme Court on 27.09.2021 by one of the petitioners where the Supreme Court gave liberty to file appropriate proceedings before this Court.

Learned counsel appearing for the State submits that the petitioners were granted parole and have failed to return back to the Correctional Home. Counsel submits that the petitioners would have to make a fresh application for grant of release under the 1992 Act.

Section 61 of the West Bengal Correctional Services Act, 1992 provides that every prisoners shall be released from the Correctional Home on the particular date on which his release becomes due. Section 61(2) provides that a prisoner shall also be released on receipt by the Superintendent of any order of release made by any competent Court or any order of premature release made by the State Government. The release shall be made on consideration of such matters as may be prescribed. Section 61(2)(i) of the Act further provides that a convicted prisoner, other than a prisoner referred to in Section 61(4) is entitled to release on parole if the prisoner has undergone continuous imprisonment in the Correctional Home for a period of 14 years including the period of release on parole and the period of remission.

There is no doubt that a mandatory obligation is cast on the State authorities to act in accordance with the Act. The Section does not speak of any application on the part of the convicts for releasing under Section

61(2)(i). Section 61(4) which is the exception to Section 61(2)(i) is applicable for convicts where a sentence of life imprisonment is imposed for an offence for which death is one of the punishment provided by law or where the death sentence has been commuted to imprisonment for life under Section 433 of the Code of Criminal Procedure, 1973. The petitioners before the Court do not fall within Section 61(4) of the Act.

Upon considering the relevant provisions, this Court is of the view that the State authorities are under a mandatory obligation to consider the individual cases of the petitioners with reference to Section 61(2)(i) of the 1992 Act and with special reference to the order passed by the Supreme Court on 7.07.2017.

WPA 14583 of 2022 is accordingly disposed of with the direction on the respondent no. 2 being the Additional Director General and Inspector General of Correctional Services, West Bengal to consider and dispose of the case of the petitioners within a period of three weeks, as prayed for. A copy of the said decision shall be communicated to the petitioners within a period of one week on which such decision is taken.

(Moushumi Bhattacharya, J.)