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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 9073 of 2023

Md. Khalid
Vs.
Chief Secretary,
State of West Bengal & Ors.

Mr. Krishna Das Poddar,
... for the petitioner

Mr. Amal Kumar Sen,
Mr. Lal Mohan Basu
...for the State

Mr. Saikat Banerjee,
Mr. Karan Prasad
...for the High Court Administration

The present challenge is against a resolution of the State Sentence Review Board (in short SSRB), West Bengal for reconsideration of the petitioner's request for premature release. The petitioner is a lifer in jail since about 1993, that is, for a period of more than 30 years and is approximately 57 years of age.

Learned counsel for the petitioner submits that despite previous directions of a coordinate Bench of this Court for the Board to take into account the conduct of the petitioner during his time in parole and other relevant decisions of the High Courts and the Supreme Court in that regard, the SSRB again refused to consider the case of the petitioner for

premature release, without taking into consideration such aspects of the matter.

Learned counsel places reliance on several judgments, primarily of the Supreme Court as well this Court, and submits that the overwhelming majority of the judgments have held that the conduct of the petitioner during parole and during incarceration as well as the potential of the petitioner to commit a serious crime if released prematurely, are the relevant considerations, which have not been adverted to by the SSRB.

Learned counsel, apart from relying on such judgments, which will be discussed hereunder, also points out that the petitioner, being a graduate, engaged in share-trading business during the period when he was on parole on several occasions. It is further submitted that the petitioner, if rehabilitated, can join mainstream society by having a source of income, more so, since the petitioner acquired employable skills during his imprisonment, a certificate of which is annexed to the supplementary affidavit of the petitioner.

Learned counsel also places reliance on the conduct of the petitioner during imprisonment, which was satisfactory even as per the Superintendent of the concerned Correctional

Home where the petitioner was all along imprisoned.

Learned counsel next places particular reliance on the observations of the coordinate Bench on the last occasion, where the learned Single Judge had specifically observed that the Board is directed to take into account the conduct of the petitioner no. 1 (present petitioner) during his time in parole as well as recent decisions of the High Courts and Supreme Court.

Learned counsel for the State primarily opposes the prayer on the ground that the crime committed by the petitioner, for which he was convicted, was heinous, being a noted bomb-blast case in the middle of Kolkata, which resulted in death of about 70 innocent persons. It is contended that keeping in view the nature of the said crime and the fact that the petitioner has potential to recommit a similar crime if let loose, the SSRB was quite justified in refusing premature release of the petitioner.

That apart, it is pointed out that the SSRB gave sufficient reasons in its refusal, observing inter alia that the Review Board is not convinced that the convict will not commit a crime of similar nature in future, also noting that the Kolkata Police raised strong objection and expressed concern about

general aggravation of the law and order situation in the event of release of the said convict.

Learned counsel specifically places reliance on a Notification dated December 20, 2022 by the Government of West Bengal, which was published in the Official Gazette on December 21, 2022.

In the said Notification, pursuant to directions of the Hon'ble Supreme Court in SLP(Crl) No. 529 of 2021, certain guidelines were issued by the Government. The said guidelines, inter alia, require that premature release has to be recommended by SP and District Magistrate for the District and Commissioner of Police, Calcutta for Calcutta, as the case may be and the SSRB, before reviewing, shall consider the opinion of the convicting or confirming courts for premature release of the convicts in the light of the order dated November 2012 passed by the Supreme Court in the matter of *Santosh and another vs. State of Haryana*. Lastly, the Circular provides, the SSRB will on the basis of recommendation made by SP and District Magistrate or Commissioner of Police, as the case may be, and on the basis of opinion of the convicting/confirming courts, finally recommend for release of the life convicts prematurely in exercise of the power under Section 432(1) of the Code of Criminal Procedure, 1973.

It is submitted that after being remanded to the SSRB, the exercise ought to be considered as a de novo consideration, where the Notification of December 20, 2022 is squarely applicable.

Learned counsel for the State next cites a judgment authored by the National Human Rights Commission, providing guidelines, inter alia, regarding the stage of sentence review board and premature release in Clause 4.1 thereof, while considering the eligibility for premature release, it is stipulated that prisoners convicted of offences such as rape, dacoity, terrorist crime etc. shall not be eligible for premature release.

Learned counsel appearing for the State submits that since the police authorities have not recommended, rather vehemently opposed the premature release of the convict, that is, the present petitioner, the SSRB rightly exercised its authority in proper perspective and, as such, the same ought not to be overturned by this court.

Learned counsel appearing for the Registrar General of this court submits that the impleadment of the said respondent is rather premature since the role of the said authority comes in only once the question of taking the opinion of the convicting/confirming court comes into play, which

is at a much later stage even as per the 2021 Notification.

Considered the arguments of the parties.

Out of the judgments cited by learned counsel for the petitioner, *State of Haryana vs. Raj Kumar* lays down that the power of remission is to be exercised by the State Government as an appropriate government if the prisoner has undergone 14 years of actual imprisonment. The said judgment primarily deals with interplay between the power on the Governor and the State Government and, as such, is not germane in the present context. In the judgment of *Laxman Naskar vs. Union of India and others* reported at (2000) 2 SCC 595, the Supreme Court laid down five yardsticks for the purpose of premature release. The guidelines are:

- (i) Whether the offence is an individual act of crime without affecting the society at large;
- (ii) Whether there is any chance of future recurrence of committing crime;
- (iii) Whether the convict has lost his potentiality in committing crime;
- (iv) Whether there is any fruitful purpose of confining the convict any more and;
- (v) Socio economic condition of the convict's family.

Again in the judgment of *Laxman Naskar vs. State of West Bengal* reported at (2000) 7 SCC 626, the same guidelines were reiterated by the Supreme Court.

Learned counsel also cites a judgment in WPA 17248 of 2021 (*Sri Gopal Sarkar vs. State of West Bengal and others*) where several judgments of the Supreme Court were considered. The court while passing the said judgment inter alia places reliance on *Satish @ Sabbe vs. the State of Uttar Pradesh*, reported at (2021) 1 Supreme 294 where the Supreme Court had observed that any assessment regarding predilection to commit crime upon release must be based on antecedents as well as conduct of prisoner while in jail and not merely on his age or apprehensions of the victims and witnesses.

Again in *Zahir Hossain and others vs. State of West Bengal and another* reported at 2000 1 SCC (Cri) 631, the Supreme Court laid down that the conduct of the prisoners while in jail is an important factor to be considered as to whether they have lost their potentiality in committing crime due to long period of detention.

This court, in the said case, had also observed that apart from the eight years while the prisoner was on bail, he obtained five paroles for a total 42

days during the pandemic period during which he roamed free and did not have a single incident reported against him from any quarter of society. The same was considered as a mitigating factor for considering the premature release.

The takeaway from the above judgments is that certain considerations have to be read into the exercise of premature release of a prisoner/convict. The Supreme Court has clearly observed that the conduct of the prisoner while in jail and in parole is an extremely important consideration in such exercise and not merely the age of the petitioner or the apprehensions of victims and witnesses and/or neighbours.

The Supreme Court in *Hossain (supra)* has also held that the conduct of the prisoners while in jail is an important factor to be considered as to whether they have lost their potentiality in committing crime due to long period of detention.

In the present case, the place from where the police came and the SSRB decided was mere Paranoia on the part of the said authorities on the premise of the nature of the crime committed by the petitioner more than three decades back.

As in *Hossain (supra)*, the potentiality of a prisoner to commit crime has to be considered in the context of the conduct of the prisoners in jail,

due to long period spent by the petitioner in detention. It is rather obvious that a prisoner who is for the last 30 years behind the bars, that is, more than the period of his life when he was free before his incarceration, the conduct of the petitioner during his incarceration and parole acquires all the more relevance rather than his conduct prior to being convicted.

That apart, the five tests laid down by the Supreme Court in *Laxman Naskar vs. State of West Bengal (supra)* also take into account the factor where the convict has lost his potentiality in committing crime, which has been elaborated in *Satish @ Sabbe (supra)*.

The socio-economic condition of the convict and his family is another relevant consideration.

In the present case, certain mitigating factors have been projected by the petitioner such as the petitioner having acquired employable skills while in imprisonment as well as being a Graduate and having engaged in share trading business, which is a healthy commercial activity which can fetch some income for the petitioner, which enhances the scope of the petitioner being absorbed in mainstream society and in the rehabilitation of the petitioner. As of today, punishment is more of a correctional measure than a retributive one and, as such, the

scope of rehabilitation has to be factored into any consideration of early remission.

In the present case, the petitioner has annexed to the supplementary affidavit a certificate given by the Superintendent of the Correctional Home where the petitioner is at present incarcerated. The same, in no uncertain terms, enumerates that his conduct during imprisonment is good and satisfactory. Regarding potentiality of committing further crime in view of his conduct/mental attitude [the test laid down in *Zahir Hossain (supra)*] the Superintendent of the Midnapore Central Correctional Home was of the opinion that the petitioner has already lost his potentiality, though apparently it cannot be judged, but he has no tendency to commit further crime. Even the cautious approach of the Superintendent, which is evident from the said report, betrays the fact that the Superintendent did not find anything incriminating in the conduct of the petitioner while considering his case.

On the question of chances of rehabilitation on release, keeping in view the nature of labour performed by the petitioner in custody, the Superintendent touched the issue that before custody/conviction, he was a businessman and, according to his statement, he has every

potentiality of rehabilitation, giving tuition to children/accountant job.

Even if we do not rely much on the said statement, it is evident that the petitioner has acquired certain skills as a graduate and has earned some money from share transactions while on parole. In fact, the petitioner was on parole for a considerable period stretched over several (about 19) months, in the present case, during which is conduct left no scope of being complained of.

Coming to the question of applicability of the Notification of December, 2021, a careful scrutiny of the matter discloses that the present case is not a fresh consideration by the SSRB on a de novo recommendation by the State or the police authorities or any other authority.

In the present case, as evident from the materials-on-record, there was an initial consideration by the SSRB and an order was passed by the said Board on September 14, 2018, which is four years prior to the coming into force of the 2022 Notification. By the said order, as recorded in the order of the learned coordinate Bench dated November 29, 2022 in W.P.A. 23255 of 2019 (which order was also passed prior to the enactment of the notification) the prayer for premature release of the present petitioner was not

recommended by the Board on the ground that the petitioner was a part of a group which organized a heinous crime with a chance of future recurrence. The Court, while considering such issue, came to the conclusion that the Board was to take into account the conduct of the petitioner during his time on parole as well as recent decisions of the Supreme Court and High Courts with regard to premature release, while reconsidering the issue of premature release of the petitioner.

Subsequently, on March 24, 2023 in another challenge, it was observed by the same learned Judge that since the Board had given a decision as reflected from the proceeding of the special meeting held on February 17, 2023, the petitioner would have to challenge the decision afresh, which was preferred by the petitioner.

Hence, it is evident that the present reconsideration is nothing but a part or a sequel of the saga which started on September 14, 2018 with the SSRB refusing the request of the petitioner for premature release.

The entire exercise is being remanded time and again to the SSRB because of the erroneous construction by the SSRB and the State-authorities of the law and the directions of this Court.

The crux and distilled proposition, which can be culled out from the above discussions, including the propositions laid down by the Supreme Court and the High Courts as well as the previous direction in the matter of the petitioner, the relevant considerations are:

- (i) the conduct of the petitioner – both during his time on parole as well as during incarceration,
- (ii) The potential of the petitioner to organize a similar crime, for which he was convicted in the first place, if released, taking a cue from the conduct of the petitioner as indicated above.
- (iii) The scope of the petitioner being rehabilitated and absorbed into mainstream society for the purpose of the petitioner getting a second chance to lead a good life conforming to the norms of the society.
- (iv) Whether the petitioner, keeping in view the socio-economic background of the petitioner, is in a position to earn some amount of income to sustain himself if released and/or whether the petitioner has the minimum skills to integrate with society and earn an income.

The above considerations are utterly absent in the impugned decision of the SSRB. It transpires from a cursory perusal of the same that the SSRB was rather influenced by the opinion of the police, which can be related to the Paranoia of the police as observed above, that there was a strong objection to the premature release merely because of the heinous nature of the crime committed by the petitioner thirty years back and the vague possibility of the petitioner committing such crime again, without any reflection whatsoever on the conduct of the petitioner during his entire period of incarceration and parole, which is the only relevant yardstick to gauge the potential of the petitioner of committing such crime.

In the impugned decision, the SSRB overturned and reversed its previous observations “keeping in view the nature of offence in which the accused was involved”, which is not the sole consideration at all in such cases.

The Review Committee expressed that it is “not convinced” that the convict will not commit a crime of similar nature in future. The reason of such conviction seems apparently to be nothing more than thin air.

It as also mentioned, as an afterthought, that the Kolkata police raised strong objection in the

meeting and expressed concern of the general aggravation of the law and order situation in the event of release of the said convict.

If “general aggravation of the law and order” is a relevant consideration while assessing a case of premature release, probably half of the population qualify for being guilty of such general aggravation of law and order situation and should be behind the bars in the first place.

Such vague consideration, it is surprising, also became a part of the SSRB consideration, although the SSRB, as per the contemplation of the Statute, is supposed to be a specialized authority, which is in charge of considering the cases of premature release of life convict, which is an extremely sensitive issue.

Thus, the impugned decision of the SSRB in its meeting held on February 17, 2023 does not qualify to be sustained in any manner whatsoever, being *de hors* the law as well as contrary to the direction of the coordinate Bench under which the same was undertaken, as well as being in gross contravention of the judgments of the Supreme Court prevalent in such field.

Insofar as the National Human Rights Commission guidelines are concerned, there is nothing to show that the said guidelines, including

Clause 4.1 thereof, is an absolute and binding rider, which has to be adhered to by the State operators and/or the SSRB.

In any event, the said guidelines were issued long back and were fully in force from much before the time when the previous considerations by the learned Single Judge happened. Even the SSRB, on the previous occasions, did not consider the said guidelines as a relevant factor at all. Moreover, in none of the previous orders of the coordinate Bench can I find any reference to the said National Human Rights Commission's guidelines by even the State authority.

Thus, in the above circumstances, W.P.A. No. 9073 of 2023 is allowed, thereby setting aside the impugned decision of the SSRB dated February 17, 2023 and remanding the matter back to the SSRB to reconsider the question of the prayer for release of the petitioner on the basis of the request made on behalf of the petitioner in that regard in the year 2018, which exercise shall be completed positively before the October 15, 2023. Such fresh consideration shall be in the light of the above observations and in consonance of the law on the subject, as discussed above.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)