

AD-29
Ct No.09
28.07.2023
TN

WPA No. 14257 of 2023

Biresh Poddar and another
Vs.
State of West Bengal and others

Mr. Gunjan @ Kanishk Sinha
.... for the petitioners

Mr. Biswabrata Basu Mallick,
Mr. Sanjib Das,
Mr. Madhusudan Mukhopadhyay,
Mr. Biman Halder
.... for the State

The grievance of the petitioner no. 1, who is in incarceration for about twenty-three years, is that the petitioner no.1's prayer for remission was refused by the respondent authorities.

Learned counsel places reliance on several judgments of this court, as well as the Supreme Court, to indicate that the relevant criteria were not considered by the respondent authorities while so rejecting.

It is further submitted that the concerned District Judge was not a part of the State Sentence Review Board, which considered and rejected the petitioner no.1's application for remission.

Learned counsel appearing for the respondent authorities submits that the last rejection took place

in the year 2022. Hence, in the event the petitioner no. 1 seeks remission, in view of the previous rejection, he has to make a fresh application, which can be considered by the respondent authorities in due course of the law.

A perusal of the impugned order of rejection, as disclosed by the State as well, indicates that the consideration before the State Sentence Review Board in its 67th meeting held on April 05, 2022, which also comprised of the rejection of the present petitioner no.1's application for remission, was on an extremely cryptic note.

The remarks against the present petitioner no.1's name, in the remarks column, read that the petitioner no.1 "cold bloodedly murdered his wife and five (5) daughters – inhuman in nature – chances of future recurrence cannot be ruled out – there is no one to look after him in family – local people raised strong objection – considering nature of the crime and objection by local people, premature release proposal was strongly opposed. Considering the objection by police authorities and apprehension about rehabilitation, premature release was not recommended by the Board".

The State merely acted upon such recommendation and refused the petitioner's application.

However, the Guidelines relating to premature release of convicts/prisoners, as formulated by the National Human Rights Commission, a copy of which has been fairly handed up by the respondent authorities themselves, indicated that there are several other considerations which were omitted in the impugned recommendation of the State Sentence Review Board.

In a communication dated February 11, 1999, the Joint Secretary of the National Human Rights Commission circulated among all the IG (Prisons)/Chief Secretaries of States, etc. the relevant Guidelines.

Clause 5 of the said Guidelines pertains to Procedure for processing of the cases for consideration of the Review Board. In Clause 5.2, it is stipulated that the Superintendent of Jail shall prepare a comprehensive note giving out the family and societal background of the prisoner and, *inter alia*, will reflect fully about the conduct and behaviour of the prisoner in jail during the period of his incarceration, behaviour/conduct during the period he was released on probation leave, change in his behavioural pattern

and the jail offences, if any, committed by him and punishment awarded to him for such offence(s). A report is also to be prepared about the physical/mental health or any serious ailment of which the prisoner is suffering, entitling his case special consideration for premature release.

Clause 5.3, again, stipulates that the Superintendent of Jail shall make reference to the Superintendent of Police of the district where the prisoner was ordinarily residing at the time of the commission of the offence, for which he was convicted and sentenced, or where he is likely to resettle after his release from the jail.

There is a detailed modality spelt out in the said guidelines.

Although a presumption may very well be raised in the present case that the prescribed procedure was substantially complied with by the State, even proceeding on such premise, it is seen that the consideration by the Sentence Review Board did not take into account the relevant criteria and yardsticks stipulated by the Guidelines of the Human Rights Commission.

Tests, such as the conduct and behaviour of the prisoner in jail during the period of incarceration, his behaviour/conduct during the period he was released

on probation leave, change in his behavioural pattern during his incarceration, the potential of the petitioner to commit similar crime again and/or to create conditions which might be detrimental to the people of his neighbourhood, have not been considered in detail in the said Review Board's meeting.

That apart, the composition of the Board is also *de hors* the provisions of the Guidelines, since the concerned District Judge was not a member of the said Board.

Keeping in view such criteria, the matter is required to be remanded back to the State Sentence Review Board for a further consideration.

Since the petitioner had already made an application, which was improperly considered by the State Sentence Review Board, a further application of the petitioner no. 1 is not required.

Accordingly, WPA No. 14257 of 2023 is disposed of by directing the respondent authorities to place the matter afresh before the State Sentence Review Board, constituted properly in accordance with law and the relevant Guidelines, for a reconsideration of the petitioner no.1's application for remission, upon taking into account all the relevant yardsticks as stipulated in law and settled by several judgments of the Supreme Court and this court, as well as the

relevant Guidelines, also considering the ingredients as spelt out above in the present order.

It is expected that such reconsideration shall be held as expeditiously as possible, preferably within three months from this date. The State respondent shall constitute a proper State Sentence Review Board for such purpose, if necessary also placing before the said Board other pending remission application(s) of other prisoner(s), as expeditiously as possible, positively within one month from this date.

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 with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)