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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 24276 of 2023

Narayan Mahato @
Naran Mahato
Vs.
State of West Bengal & Ors.

Mr. Somopriyo Chowdhury,
Mr. Avishek Bhandari,
Mr. Dipayan Dan
...for the petitioner

Mr. Anirban Roy,
Mr. Sk. Md. Galib,
Ms. Sujata Mukherjee
...for the State

1. Affidavit-of-service filed in Court today be kept on record.
2. The petitioner who is in custody, being convicted primarily under Section 302 of the Indian Penal Code, for a period of 19 years, seeks premature remission. It is contended that on the application of the petitioner on such count, the State Sentence Review Board (SSRB), which was improperly constituted, took a decision refusing the petitioner's prayer. It is contended that since the composition of the Board was not in consonance with the existing guidelines, the said decision ought to be set aside on such score alone.

3. Secondly, the convicting court's opinion was not taken within the purview of Section 432(2) of the Code of Criminal Procedure. Thirdly, the well-settled yardsticks which are required to be adverted to, were not taken into consideration by the SSRB in refusing the petitioner's request for remission. In such context, learned counsel places reliance on *Gopal Sarkar vs. State of West Bengal*, a judgment of this Court, reported at *AIR Online 2022 Cal 2520*, where under similar circumstances, a release of the convict-in-question was directed.

4. Learned counsel also submits that in the judgment of *Biresb Poddar's case*, passed in WPA No. 14257 of 2023 on July 28, 2023, this Court had categorically deprecated the composition of the self-same SSRB and had directed a reconstitution of the Board. However, since the petitioner was also refused remission by the same Board, which was the subject matter of scrutiny in *Biresb Poddar*, the impugned refusal ought to be set aside.

5. Learned counsel appearing for the State submits that in deference to the direction passed in *Biresb Poddar*, the SSRB is being reconstituted. It is submitted that all the

relevant considerations are required to be adhered to while considering cases of remission and, for such purpose, the matter be remanded to the newly constituted SSRB.

6. A perusal of the impugned decision refusing the petitioner's request for remission shows that the same is palpably cryptic and does not take into account any of the relevant yardsticks for considering a case of remission. The authorities merely placed undue stress on the fact that the offence was grave in nature. In a cryptic manner, it was observed that the chances of deterioration of law and order situation would come in the way of releasing the petitioner. It was also observed that considering potentiality of the petitioner and apprehension on chances of further organized crime by the convict, such premature release was not recommended.

7. I find that there is nothing whatsoever to corroborate the conclusion that the petitioner has sufficient potential to reorganize a similar crime or that the petitioner would, even after 19 years of incarceration, be such a threat to society that he could tilt the law and order situation of his village for the worse.

8. The mere gravity of the offence, for which the petitioner was convicted in the first place, cannot be a ground for refusal of remission by itself. In fact, one of the major yardsticks which are to be looked into for such purpose is the present conduct of the petitioner/convict in incarceration. No report whatsoever is found to have been relied on while refusing the petitioner's request for remission. Hence, it is palpable that the conduct of the petitioner in custody all along and his current demeanour has not been entered into at all. There is no adverse report against the petitioner, as apparent from the records.

9. That apart, the potentiality of the petitioner cannot merely be determined by the current age of the petitioner (which has also not been considered) but one also has to take into account the actual and tangible chance of the petitioner-convict reorganizing such a crime, if he is reintegrated in mainstream society.

10. It is well-settled that in modern jurisprudence, one of the cardinal considerations of punishment is reformation and not retribution. The said aspect has been altogether negated by the impugned refusal.

11. Moreover, the respondent-authorities were required to consider the opinion of the convicting court in terms of Section 432(2) of the Code of Criminal Procedure, as held in *Gopal Sarkar (supra)*.

12. Also, since it was already held in *Biresb Poddar (supra)* that the composition of the Board, which refused the petitioner's request for remission, was faulty, the said Board is also required to be reconstituted for taking a proper decision.

13. In such view of the matter, W.P.A. No. 24276 of 2023 is disposed of by directing the respondent-authorities to reconstitute properly and in accordance with law a State Sentence Review Board within one month from date.

14. Immediately thereafter, the case of the petitioner shall be reconsidered on the basis of the request already made by the petitioner along with other similarly-placed convicts, if their requests are still pending.

15. Such consideration shall be in the light of the above observations as well as the yardsticks stipulated in *Gopal Sarkar vs. State of West Bengal*, reported at *AIR Online 2022 Cal 2520*.

16. Such reconsideration shall be conducted by the newly-constituted State Sentence Review

Board within one month from the date of its reconstitution in terms of the above direction.

17. It is made clear that the case of the petitioner for premature release has not been considered by this court on merits but the SSRB has to keep in mind the relevant yardsticks, as indicated above, which are mandatorily required to be adverted to by the Board before taking a decision on the petitioner's request for premature release.

18. In view of the unlawful constitution of the SSRB, which passed the impugned order of refusal of the petitioner's prayer for remission, the said order is deemed to be rendered null and void.

19. There will be no order as to costs.

20. 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.)