

D/L. 11.
January 10, 2023.
MNS.

WPA No. 28437 of 2022

Kanchi @ Sanjit Makhai
Vs.
The State of West Bengal and others

Mr. Malay Bhattacharyya,
Mr. Subhrajyoti Ghosh

... for the petitioner.

Mr. Raja Saha,
Mr. S. C. Lahiri

...for the State.

Learned counsel for the petitioner contends that the petitioner, who was convicted of an organised act of gang rape, has already spent more than 21 years behind the bars. Hence, the petitioner is entitled to premature release from custody by the respondent-authorities. However, the SSRB, that is, the State Sentence Review Board, has turned down such request of the petitioner.

It is contended, by placing reliance on several judgments of the Supreme Court, that none of the relevant criteria, which are to be looked into while considering such request, were taken into consideration in the present case.

Learned counsel appearing for the State places reliance on a recommendation of the National Human Rights Commission dated October 20, 1999. It is submitted that, pursuant to the said guidelines, the State of West Bengal has already formed SSRB, which is functioning and took the decision impugned in the present writ petition.

By placing specific reliance on Clause 4 of the said Guidelines, a copy of which is handed over in Court and be kept on record, it is argued by learned counsel for the State that certain categories of convicted prisoners undergoing life sentence “may not” be considered eligible for premature release. Sub Clause 4.1 thereunder stipulates that prisoners convicted of the offences as given therein, including rape, fall within such category.

Thus, it is submitted that the respondent-authorities acted well within their jurisdiction and discretion in refusing the premature release of the present petitioner.

Learned counsel further argues that all the procedures given in the guidelines were undertaken duly by the respondent-authorities in

the present case, including seeking reports from several authorities, as mandated therein.

Heard learned counsel for the parties.

The decision of the SSRB, annexed at page 32 of the writ petition, specifically stipulates the ground for refusal of the premature release of the present petitioner in the following words:

“Organized act of gang rape by the convict and his associates on two girls. Hence, the crime affected the society. Premature release of the convict is opposed by police authorities. Considering the nature of crime committed by the convict and age and potentiality of the convict, premature release prayer of the convict is not recommended by the Board at this stage.”

The yardsticks for considering premature release were considered by the Supreme Court in various judgements. In one of such judgements, cited by the petitioner, that is, in the case of *Zahid Hussein and others Vs. State of West Bengal and another*, the Supreme Court held, *inter alia*, that in the opinion of the Bench, the conduct of the petitioners while in jail is an important factor to be considered as to whether they have lost their potentiality in committing the crime due to long period of detention.

It was further observed that the views of the witnesses who were examined during trial and the people of the locality cannot determine

whether the petitioners would be a danger to the locality, if released prematurely. It was observed in the said judgement that this has to be considered keeping in view the conduct of the petitioners during the period they were undergoing sentence. In fact, age alone cannot be a factor while considering whether the petitioners still have potentiality of committing crime or not as it will depend of changes in mental attitude during incarceration.

The next judgment cited by the petitioners is the case of *Satish @ Sabbe Vs. The State of Uttar Pradesh*, where the Supreme Court held that in the said case, considering how the petitioners have served nearly two decades of incarceration and have thus suffered the consequences of their actions, a balance between individual and societal welfare can be struck by granting the petitioners conditional premature release, subject to their continuing good conduct. This would both ensure that liberty of the petitioners is not curtailed, nor that there is any increased threat to society.

It is seen from the judgements of the Supreme Court that the general tenor of the view expressed therein is that age *ipso facto* cannot be

a consideration for refusing premature release of a convict. In fact, the factum of the present petitioner being aged about 41 years does not by itself operate against the petitioner's premature release, but also is a factor for consideration in favour of his release. Since the petitioner is not too elderly till now, there is probably still scope of reintegration of the petitioner in the mainstream of society by engaging himself in a proper occupation. However, if the said chance is refused in a blanket fashion, the convict, who is behind the bars would fail to appreciate the rectification component of penalty.

Since jails are now called 'correctional homes', the letter and spirit of such nomenclature ought to be taken into consideration. In the event premature release is refused merely on the ground of the age of the petitioner and the nature of the crime alone, it would not do justice to the notion of justice befitting a civilized nation.

The fact that the organised act of gang rape by the convict and his associates affected the society at the relevant point of time twenty-one years ago cannot be a determinant for refusal of the premature release.

In the impugned decision of the SSRB, the said authority proceeded to observe that premature release of the convict was opposed by police authorities and merely considering the nature of crime committed by the convict and age and “potentiality” of the convict, premature release was refused. The nature of the crime committed by the petitioner more than 21 years back appears to have swayed with the SSRB while coming to the conclusion that the potentiality of the convict to commit the crime still remains. Such yardstick is irrelevant and besides the issue.

However, the Supreme Court has repeatedly observed that what is relevant is the conduct of the convict while in jail, which is an important factor to be considered in respect of loss of potentiality or retention of the same to commit a crime over the long period of detention.

In the present case, however, there is no iota of reflection of such consideration in the decision of the SSRB. Rather, extraneous and irrelevant circumstances including the present age of the petitioner have been taken note of by the SSRB while passing the order of refusal.

That apart, it is alleged that a co-accused of the petitioner in the same crime has already been granted premature release. The same, in the event there is no prominent distinguishing factor between the two, is patently violative of the principle of equality enshrined in Article 14 of the Constitution of India.

Such aspect of the matter is also not reflected from the impugned decision of refusal of premature release of the petitioner.

Hence, the impugned decision of the SSRB not to recommend the premature release of the petitioner cannot be sustained.

Accordingly, WPA No. 28437 of 2022 is disposed of by setting aside the recommendation of the State Sentence Review Board of West Bengal refusing to recommend the premature release of the petitioner.

The SSRB shall, on the basis of the material feedback already on record, reconsider the issue of premature release of the petitioner on the correct yardsticks as indicated above, including the conduct of the convict during the period of his incarceration as well as his conduct during parole (which appears to be satisfactory in the present case). The SSRB shall also take into

consideration the factor that “more than two decades of incarceration” (quoting from the Supreme Court judgements) should have sufficiently mitigated the potentiality of crime in the petitioner.

The SSRB shall revisit the issue and decide the same as expeditiously as possible in accordance with law and in the light of the above observations, positively within three months from this date.

It is, however, made clear that the SSRB, for re-deciding the issue on the criteria as indicated above, shall not insist upon fresh reports from various authorities and the proposal of the Superintendent of Jail, but shall decide the issue on the materials which were produced before it on the previous occasion.

Upon such decision being taken, the same shall be intimated immediately thereafter to the petitioner.

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.)