

D/L. 4.
January 4, 2024.
MNS.

WPA No. 63 of 2024

Akkas Ali Khan and another
Vs.
State of West Bengal and others

Mr. Gunjan Sinha @ Kanishk Sinha,
Ms. Lipika Das Sinha

... for the petitioners.

Mr. Wasim Ahmed,
Md. Shehabuddin

...for the State.

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the petitioners contends that the petitioner no. 1 sought an early remission.
3. Previously the petitioner no. 1 was constrained to file WPA No. 20532 of 2023 when the writ court while disposing of the said writ petition vide order dated October 5, 2023 had directed the respondent authorities to consider the representation of the petitioner no. 1 for remission of the petitioner no. 1 (present petitioner no. 1 herein) taking into consideration the extant law and governing

Circulars/Notifications on such score as well as the established principles of law.

4. Such consideration was directed to be undertaken within four weeks from the date of communication of the order to the respondent-authorities.
5. Despite the communication having been made on October 9, 2023, even after expiry of the stipulated period, such application for remission is still pending for consideration, apparently before the Hon'ble Governor of West Bengal.
6. It is submitted that since the application for remission of the petitioner no. 1 has been kept pending and in order to reintegrate the petitioner no. 1 in society, the parole granted subsequently to the petitioner no. 1 on December 15, 2023 be extended till the remission application of the petitioner no. 1 is decided.
7. Learned counsel also places reliance on an unreported judgment of *Sarfaraaj Khan alias Babu Vs. the State of West Bengal and others* dated December 4, 2020 in WPA No. 9966 of 2020, where it was held that the petitioner therein was granted liberty to make a

representation with regard to his extension of parole before the concerned High Powered Committee. In view of the perilous situation of the petitioner therein, the respondents were restrained from re-arresting the petitioner on the basis of his conviction. Liberty was given to the petitioner therein to apply for further extension before the High Powered Committee then constituted by the Supreme Court. The petitioner no. 1 in the present case seeks similar relief.

8. Learned counsel for the State places reliance on Section 62 of the Correctional Services Act, 1992 ("the 1992 Act"), which provides that a prisoner sentenced to imprisonment for a period of two years or more may be released by the Inspector General of Correctional Services on parole for such period, not exceeding one month excluding the period required for journeys from and to the Correctional Home, as may be prescribed on the execution by the prisoner of a bond for a sum not exceeding Rs.1,000/-.
9. In the present case, it is submitted that on December 15, 2023, the parole was

accordingly granted to the petitioner no. 1 for twenty days.

10. Hence, there is no scope of further extension of the same.

11. It is further argued that in terms of the order dated October 5, 2023 passed in WPA No. 20532 of 2023, the respondents have done their duty by forwarding the request of the petitioner for remission. However, the same is now pending before the Governor of West Bengal.

12. A consideration of Section 62 of the 1992 Act shows that the Inspector General of Correctional Services has the discretion to grant parole to a particular prisoner who is sentenced to imprisonment for a period of more than two years.

13. In exercise of such discretion, the present petitioner was granted parole for a period of twenty days.

14. As such, the discretion available under Section 62 of the 1992 Act has already been exercised in favour of the petitioner no. 1, albeit not for the upper limit of thirty days but for twenty days.

15. Insofar as the compliance of the order dated October 5, 2023 passed in WPA No. 20532 of 2023 is concerned, since the matter was duly forwarded and is pending before the Governor of West Bengal, it cannot be said that the respondents were altogether negligent in their duty to comply with the same.

16. In any event, the request of the petitioner no. 1 for remission stands on an entirely different footing from parole granted under Section 62 of the 1992 Act and the two cannot be equated or be made conditional upon each other.

17. That apart, the judgment in *Sarfaraj Khan alias Babu* (supra) was delivered under the peculiar circumstance of the case. At that juncture, the Covid-19 Pandemic was rampant and the Supreme Court by an order dated March 23, 2020 formed a High Powered Committee to consider the request of parole of prisoners in view of the then prevalent Pandemic. The petitioner therein, as recorded in the order dated December 4, 2020, was under severe duress since the petitioner's wife was going to be surgically operated upon and the petitioner had an infant child of 5 years to

look after. In such extenuating circumstances, the petitioner therein had been granted parole for a limited period.

18. However, in the present case, I do not find any exceptional circumstance to grant similar benefit to the petitioner no. 1.

19. Since the discretion under Section 62 of the 1992 Act has already been exercised in favour of the petitioner no. 1, there is no reason why the period of parole should be extended in favour of the petitioner no. 1.

20. Thus, the relief sought by the petitioner no. 1 herein cannot be granted.

21. Accordingly, WPA No. 63 of 2024 is disposed of with liberty, however, to the petitioner no. 1 to seek further parole as and when required.

22. If such a request is made in future, the respondent authorities shall consider the same in accordance with law.

23. It is also expected that His Excellency the Governor of West Bengal shall expedite the request for remission of the petitioner which is now pending before him at the earliest, keeping in view the plight of the petitioner no. 1 and similarly placed others.

24. For such purpose, a copy of this order be forwarded to the office of the Governor of West Bengal by the petitioner.

25. There will be no order as to costs.

26. 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.)