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11.03.2024
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 867 of 2024

Akkas Ali Khan & Anr.
Vs.
State of West Bengal & Ors.

Mr. Kanishk Sinha,
Ms. Lipika Das
...for the petitioners

Mr. Biswabrata Basu Mallick
Mr. Tamal Taru Panda
...for the State

1. Affidavit-of-service filed in Court today be kept on record.
2. The petitioners have challenged the petitioner no. 1's request for premature release. The petitioner no. 1 has been in custody for more than 19 years after being convicted on gang rape.
3. Learned counsel for the respondents takes a plea that an appeal by the petitioners under Article 161 of the Constitution of India is pending before the Hon'ble Governor of the State of West Bengal and, as such, no steps could be taken by the SSRB (State Sentence Review Board) in that regard. Moreover, the impugned rejection of the petitioner no. 1's request was primarily on the ground of gravity of the crime committed by the petitioner no.1.
4. Heard learned counsel for the parties.

5. Insofar as the first ground is concerned, the same cannot be a valid defence, since the Constitutional power of the Governor to grant pardons, etc. and to suspend, remit or commute sentences in certain cases has got nothing to do with the powers of the SSRB, as formulated under the several guidelines by the Supreme Court and the National Human Rights Commission. The two operate on entirely different footings. Whereas the discretion of the Governor to grant pardons is substantially unjusticiable, the exercise or inaction on the part of the SSRB is subject to judicial review. The court has very limited or no powers to scrutinize the discretion exercised by the Governor under Article 161 of the Constitution of India, which has nothing to do with the case at hand.

6. By the impugned decisions, the SSRB has refused to grant premature release of the petitioner no. 1 only on the ground of gravity of the crime committed by the petitioner. Surprisingly, the impugned decision of the SSRB mentions in categorical terms that considering the gravity of the crime, the Board Members unanimously decided not to recommend the premature release of the petitioner no. 1 at this stage, *though nothing adverse has been reported by the Superintendent, Presidency Correctional Home, about the conduct of the convict in question.*

7. Such attitude of the SSRB on repeated occasions is appalling. Despite several directions being issued every other day by the court in similar circumstances, it appears that the SSRB is immune to percolation of such yardsticks, as set out by this Court and Supreme Court time and again.

8. For the umpteenth time, it is repeated that in such considerations, although gravity of the crime is only one of the components of consideration, the other major and relevant components are the conduct of the convict throughout his period of incarceration, his conduct during parole and whether there is any specific allegation against the convict during the entire period. That apart, the scope of reintegrating the convict in mainstream society is also to be looked into, along with whether the convict is otherwise capable of such reintegration.

9. None of the said yardsticks is reflected in the impugned decision of the SSRB. Rather, the SSRB has brushed aside one of the relevant considerations, despite nothing adverse having been reported during the incarceration by the Superintendent of the Presidency Correctional Home, on the primitive premise of the petitioner no. 1's gravity of offence, which was committed about two decades back.

10. The said crime, *per se*, does not necessarily imply that the petitioner no. 1 has at present retained the inclination to commit such crime or has, by his conduct, failed to show any sign of reformation.

11. Hence, the SSRB is required to take into consideration the above yardsticks while considering the issue of premature release of the petitioner no. 1.

12. In such circumstances, W.P.A. No. 867 of 2024 is disposed of by setting aside the impugned rejections of the SSRB and directing the SSRB to consider afresh the petitioner no. 1's request for premature release at the earliest, preferably within six weeks from date, upon taking into consideration all the above aspects of the matter as well as the specific yardsticks laid down by the National Human Rights Commission and the Supreme Court in such cases.

13. There will be no order as to costs.

14. 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.)