

D/L. 20.
March 5, 2024.
MNS.

WPA No. 2428 of 2024

Bijoy Mukherjee and another
Vs.
State of West Bengal and others

Mr. Kanishk Sinha,
Ms. Lipika Das,
Mr. Suman Sahani

... for the petitioners.

Mr. Biswabrata Basu Mallick,
Ms. Mrinalini Majumdar,
Mr. Biman Halder

...for the State.

1. Affidavit-of-service filed in Court today be kept on record.
2. The petitioners have challenged the refusal of the prayer of petitioner no.1, a convict, for his premature release by the State Sentence Review Board (SSRB). It is argued that the rejection is improper, without adhering to the National Human Rights Commission Guidelines and the guidelines set by several judgments of this Court and the Supreme Court.
3. Learned counsel for the State hands over a report which indicates that the ground of refusal was primarily the nature of the crime committed by the petitioner no. 1, which was an organized act of crime and heinous in nature committed in broad daylight, as a

member of a criminal gang, which creates an apprehension in the mind of the authority that the possibility of taking retaliation upon the witnesses and their family members is very high, as opined by the police and future recurrence of the crime cannot be ruled out. That apart, objections from the victim's family members is also there. As such, the Kolkata Police authorities raised their strong objection against the release of the convict, which has been accepted by the SSRB.

4. I find from the records that the petitioner no. 1 is in custody for about 33 years now.
5. It is evident that the relevant considerations in case of premature release, as settled by courts of law and guided by the NHRC Guidelines, have not been adhered to at all by the SSRB in the present case.
6. First, the SSRB relied merely on the apprehension of the police, which is more based on the usual knee-jerk reaction of the law enforcement agencies than on practical reality. After being behind the bars as a convict for more than three decades, it is not understood by the Court as to how the petitioner no. 1/convict will resume all the loose threads and commit a similar crime as the one for which he was convicted.

Moreover, a person behind the bars for more than three decades who seeks premature release would be doubly cautious than any ordinary citizen to re-commit the same crime again, which would put him behind the bars, probably for infinity now.

7. Moreover, the allegation of future recurrence of the crime has been based on the apprehension of the police that the petitioner might retaliate upon the witnesses and their family members. I do not find any objective basis whatsoever of the police opining that the crime may recur at the instance of the petitioner no. 1, since he has already been in incarceration for more than 32 years.
8. That apart, the report of the Superintendent of the concerned Correctional Home where the petitioner no. 1 was in custody has not been adverted to by the SSRB, nor has the SSRB looked into any report filed by the Social Welfare Officer or equivalent, regarding the conduct of the petitioner no. 1 during his entire period of incarceration and parole as well as the chances of reinstating and reintegrating the petitioner no. 1 into mainstream society.
9. The composition of the family and the chances of the petitioner no. 1 reintegrating is utterly

overlooked in the SSRB report. Hence, the said report is palpably vitiated.

10. Accordingly, WPA 2428 of 2024 is disposed of by setting aside the refusal of the request of the petitioner no. 1 for premature release, which is impugned herein, and directing the respondent-authorities to ensure that the SSRB re-assembles at the earliest to reconsider the application of the petitioner no. 1 for premature release on the appropriate yardsticks as indicated above and the National Human Right's Guidelines which govern the field. It is expected that such exercise shall be concluded at the earliest, preferably within six weeks from this date.

11. Whatever decision is taken by the SSRB on such application shall be communicated in writing to the petitioner no. 1 directly or through his counsel.

12. There will be no order as to costs.

13. 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.)